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26 UNITED STATES DISTRICT COURT
27 CENTRAL DISTRICT OF CALIFORNIA
28 SOUTHERN DIVISION

29 IN RE: TOYOTA MOTOR CORP.
30 UNINTENDED ACCELERATION
31 MARKETING, SALES PRACTICES,
32 AND PRODUCTS LIABILITY
33 LITIGATION

Case No. 8:10ML2151 JVS (FMOx)

AMENDED ECONOMIC LOSS
MASTER CONSOLIDATED
COMPLAINT

JURY TRIAL DEMANDED

34 This Document Relates To:

35 ALL ECONOMIC LOSS ACTIONS

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1 Pursuant to Scheduling Order No. 3, Plaintiffs in the “Economic Loss” cases
2 file this Amended Economic Loss Master Consolidated Complaint.

3 **I. INTRODUCTION**

4 1. Since 2001, Toyota Motor Corporation (“TMC”) and its United States
5 sales and marketing arm Toyota Motor Sales, U.S.A., Inc. (“TMS”) (together,
6 “Toyota” or “Defendants”) have sold tens of millions of vehicles (under the Toyota,
7 Lexus, and Scion brand names) throughout the United States and worldwide that use
8 an electronic throttle control system (“ETCS” or “ETCS-i”).
9

10 2. ETCS vehicles operate with an electronic throttle control system that
11 severs the mechanical link between the accelerator pedal and the engine. In place of
12 the cable that connects the two components, complex computer and sensor systems
13 communicate an accelerator pedal’s position to the engine throttle, telling the vehicle
14 how fast it should go. Toyota began installing these electronic control systems in
15 some Lexus models in 1998, in Camry and Prius models in 2001 and 2002, and in all
16 Toyota-made vehicles by 2006.¹ Toyota promised that these new systems would
17 operate safely and reliably. This promise turned out to be false in several material
18 respects. In reality, Toyota concealed and did not fix a serious safety problem
19 plaguing all ETCS cars.
20
21

22 3. In press releases, sales literature, brochures and other consumer-oriented
23 documents, Toyota has consistently promoted “safety” and “reliability” as top
24 priorities in all of its vehicles and has specifically promoted ETCS. Toyota promised
25
26
27

28 ¹ See U.S. Bound Vehicle Models and MY with ETCS-i, at TOYEC-0000577.

1 that a “fundamental component of building safe cars” was testing and analyzing why
2 accidents occur.

3 4. Toyota has received tens of thousands of complaints from consumers
4 about sudden unintended acceleration (“SUA”). It also received evidence that the
5 number of complaints of sudden unintended acceleration increased substantially in
6 vehicles with electronic throttle controls as opposed to those with mechanical
7 controls. For example, on June 3, 2004, Scott Yon, an investigator in the U.S.
8 National Highway Traffic Safety Administration (“NHTSA”) Office of Defects
9 Investigation (“ODI”), sent Toyota Assistant Manager of Technical and Regulatory
10 Affairs Chris Santucci – who himself had previously worked at NHTSA – an e-mail
11 attaching a chart showing a greater than 400% difference in “Vehicle Speed”
12 complaints between Camrys with manually controlled and electronically controlled
13 throttles.
14

15
16 5. Toyota also received reports of crashes and injuries that put Toyota on
17 notice of the serious safety issues presented by SUA. Two of the top five categories
18 of injury claims in NHTSA’s Early Warning Reporting Database involved “speed
19 control” issues on the 2007 Lexus ES350 and Toyota Camry. As one internal
20 document observed, the issues presented by a SUA-related defect are “catastrophic.”²
21 Despite the catastrophic nature of this defect, Toyota has concealed its existence and
22 has failed to repair the problem.
23

24 6. Complaint data lodged with NHTSA – assuming it has been properly
25 and adequately disclosed by Toyota – reveals a SUA defect in vehicles with ETCS.
26

27
28 ² TOY-MDLID00003908.

1 Within the first year of changing from non-ETCS to ETCS, there was a material
2 increase in SUA events such that Toyota knew of a safety-related defect:

3	Lexus RX	1.8-fold increase
4	4Runner	6-fold increase
5	Avalon	2-fold increase
6	Camry	3.7-fold increase
7	Highlander	2.8-fold increase
8	RAV4	2-fold increase
9	Sienna	2-fold increase
10	Tacoma	14-fold increase
11	Lexus ES	5-fold increase

12
13
14 7. On information and belief, this trend may prove to be much greater once
15 the complaints known only to Toyota are analyzed. Toyota has received at least
16 37,000 complaints, and possibly as many as 100,000 or more, involving SUA
17 incidents.

18
19 8. Irrespective of whether these SUA events are caused by floor mats,
20 pedals, an unknown failure in the ETCS, or a failure in other aspects of the electrical
21 and mechanical systems, Toyota vehicles with ETCS are defective.

22 9. This defect renders the vehicles unsafe. For example, from 2003-2009,
23 there were 23 claims of death or injury involving speed control on the 2005 Camry, 20
24 on the 2007 Camry, and 18 on the 2007 Lexus ES.

25 10. Despite notice of the SUA defect in ETCS vehicles, Toyota did not
26 disclose to consumers that its vehicles – which Toyota for years had advertised as
27 “safe” and “reliable” – were in fact not as safe or reliable as a reasonable consumer
28

1 expected due to the heightened risk of unintended acceleration. Toyota never
2 disclosed that it had no credible or scientific explanation for SUA events in ETCS
3 vehicles. Rather than disclose the truth, Toyota concealed the existence of this
4 defect. Toyota's strategy was to "stop this from moving forward" – referring to the
5 possibility of a public hearing before the United States Congress on SUA years
6 before the congressional hearings in 2010.³

8 11. By late 2009 and early 2010, as NHTSA and Toyota received more and
9 more reports of SUA, Toyota finally admitted there might be "mechanical problems."
10 After years of consistently blaming such events on driver error and emphatically
11 denying the existence of any defect, Toyota claimed that some SUA events could be
12 explained by the entrapment of the accelerator pedal by the floor mats, or by so-called
13 "sticky pedals." Toyota recalled certain vehicles to address these potential problems
14 and publicly proclaimed that these recalls resolved all concerns of SUA in Toyota
15 vehicles. But SUA events kept occurring, even in vehicles that did not have floor
16 mats and vehicles that were not subject to the sticky pedal recall.

18 12. In response to a Congressional Committee's January 28, 2010 request
19 for internal Toyota documents involving SUA complaints, Toyota provided a
20 representative sample of reports describing calls received through the company's
21 telephone complaint line. To produce this sample, Toyota first identified 37,900
22 customer contact reports in its database as potentially related to SUA. Toyota then
23 randomly selected 3,430 of those complaints for review. Toyota ultimately
24
25
26
27

28 ³ TOY-MDLID00050747.

1 determined that 1,008 of those complaints were directly related to SUA and provided
2 these 1,008 reports to the Committee.

3 13. In responding to Congress, Toyota unilaterally excluded calls after
4 October 1, 2009, calls that it claimed did not involve SUA incidents, and calls
5 involving vehicles produced before 2001. Toyota then acknowledged 233 reports of
6 SUA from the random sample of 3,430 complaints Toyota produced to the
7 Committee. Of these 233 complaints, Toyota claimed 69 involved vehicle crashes.

9 14. These 233 incidents occurred in a broad variety of Toyota vehicles and
10 were reported in vehicles produced in every model year from 2001 through 2010.⁴
11 Assuming the 3,430 complaints selected by Toyota for review were in fact a random
12 sample of the 37,900 complaints in the Toyota database, Toyota would have received
13 an estimated 2,600 complaints of sudden unintended acceleration from Toyota and
14 Lexus drivers between January 2000 and October 2009. These complaints would
15 have included an estimated 760 crashes.

17 15. In the data the Committee reviewed, operators on the Toyota customer
18 complaint line (who relied on customer reports and information from dealer
19 inspections) identified floor mats or pedals as the cause of only 16% of the SUA
20 incident reports. Approximately 70% of the SUA events in Toyota's own customer
21 call database involved vehicles that are not subject to the 2009 and 2010 floor mat and
22 "sticky pedal" recalls.
23

24
25

⁴ Twenty-nine percent of the complaints involved Camry models, 13% involved
26 Lexus models, 10% involved Corollas, and 9% involved Tacoma models. Model
27 year 2007 vehicles were the subject of 17% of all sudden unintended acceleration
28 complaints, and model year 2002 and 2004 vehicles were each the subject of 13% of
these complaints.

1 16. Analyses of publicly available databases by other researchers indicate
2 that from 1999 to the present there were more than 5,800 SUA incidents involving
3 Toyotas that resulted in 2,166 crashes, 1,011 injuries and 78 deaths. Internally,
4 Toyota was tallying the deaths caused by SUA.
5

6 17. Despite years of warnings, Toyota has still failed to properly disclose,
7 explain or fix the underlying problem with ETCS. This leaves millions of Toyota
8 owners with vehicles that potentially could race out of control. Until 2009,
9 consumers were unaware of even the potential for such events.
10

11 18. SUA is preventable. For example, “brake-override” systems designed
12 to recognize an attempt by the driver to brake while at the same time requesting an
13 open throttle have been employed in vehicles sold in the United States by other
14 manufacturers for years. Toyota, however, failed to incorporate a brake-override or
15 other appropriate fail-safe mechanism. Indeed, until late 2009, no Toyota vehicle
16 had a “brake-override” system or other adequate fail-safe mechanical system that
17 was sufficient to prevent SUA. Only after extensive publicity concerning the SUA
18 defect in Toyota vehicles did Toyota add a brake-override as standard equipment in
19 2011 model-year vehicles. Toyota has recently announced that it will provide brake-
20 overrides to the following models: 2005-2010 Tacoma, 2009-2010 Venza, 2008-
21 2010 Sequoia, 2007-2010 Camry, 2005-2010 Avalon, 2007-2010 Lexus ES350,
22 2006-2010 IS 350 and 2006-2010 IS 250. But this announcement is not an effective
23 remedy or repair. First, it was announced not as a safety recall but as a “confidence
24 booster.” Most consumers did not and will not take their vehicles in for a brake-
25 override remedy described misleadingly as a “confidence” measure. Second, the
26 “confidence booster” does not cover all vehicles with a SUA defect. Third, the
27
28

1 brake-override being offered is not as robust or effective as an override as
2 implemented by other manufacturers.

3 19. Many of the major automobile manufacturers have had a brake-override
4 or smart pedal for years. Not so Toyota. Toyota recognized the need for a brake-
5 override” as early as 2007, if not before: when discussing the “floor mat issue,” it
6 was suggested that “a fail safe option similar to that used by other companies to
7 prevent unintended acceleration” should be investigated. The fail-safe referred to,
8 used by both GM and Audi at the time, was a brake-override. Belatedly, in 2009
9 Toyota engineers again addressed this issue after the well-publicized death of a
10 police officer due to unintended acceleration.
11

12 During the floor mat sticking issue of 2007, TMS
13 suggested that there should be “a fail safe option similar to
14 that used by other companies to prevent unintended
15 acceleration.” I remember being told by the accelerator
16 pedal section Project General Manager at the time (Mr. M)
17 that “This kind of system will be investigated by Toyota,
18 not by Body Engineering Div.” Also, that information
19 concerning the sequential inclusion of a fail safe system
20 would be given by Toyota to NHTSA when Toyota was
21 invited in 2008. (The NHTSA knows that Audi has
22 adopted a system that closes the throttle when the brakes
23
24
25
26
27
28

1 are applied and that GM will also introduce such a
2 system.)⁵

3 20. Toyota admits that the recalls have not addressed the problem. James
4 Lentz, Toyota's second-highest ranking North American executive was asked: "Do
5 you [] believe that the recall on the carpet changes and the recall on the sticky pedal
6 will solve the problem of sudden unintended acceleration?" His reply: "Not totally."

7
8 21. In prepared testimony before the Committee on Oversight and
9 Government Reform of the U.S. House of Representatives on February 24, 2010,
10 TMC President and Chief Executive Officer Akio Toyoda admitted that Toyota's
11 growth in recent years was "too quick" and the company's priorities of "first, safety;
12 second, quality; third, volume" had become "confused." Mr. Toyoda went on to
13 apologize to American consumers: "I regret that this has resulted in the safety issues
14 described in the recalls we face today, and I am deeply sorry for any accidents that
15 Toyota drivers have experienced."

16
17 22. Yoshimi Inaba, President and Chief Executive Officer of Toyota Motor
18 North America, Inc., likewise acknowledged that Toyota had failed its customers.
19 Mr. Inaba testified in the United States Senate Sub-Committee hearings on Toyota
20 recalls:
21

22 In recent months we have not lived up to the high standard
23 our customers and the public have come to expect from
24 Toyota, despite our good faith efforts. As our president,
25 Akio Toyoda, told members of Congress last week, we
26

27
28 ⁵ TOY-MDLID00041130T-0001.

1 sincerely regret that our shortcomings have resulted in the
2 issues associated with our recent recalls.

3 23. Shinichi Sasaki, TMC's Executive Vice President admitted before
4 Congress that Toyota "did not listen to its customers":
5

6 How this issue came about is because there were many
7 vehicle – excuse me – many voices were sent to us from
8 the customers, but we really did not listen to every one of
9 them very carefully, one by one. We should have really
10 listened to them carefully and rendered some technical
11 analysis so that it would be connected to our following
12 product improvement. However, the quality of this work
13 or the efficiency of our work or speed with which we
14 worked had become sluggish, or sort [sic] failed gradually,
15 and this has come to a much larger issue.
16

17 24. In testifying to Congress, Toyota made no mention of instances where
18 its own "reliable" employees replicated SUA events not caused by pedals or mats. In
19 one instance, a "reliable" service manager had the vehicle accelerate to 95 mph in
20 "five to 10 seconds." When these SUA events were replicated by Toyota
21 technicians; Toyota repurchased the vehicles and if possible made the vehicle owner
22 sign a confidentiality agreement.
23

24 25. Rather than disclose these confirmed SUA events Toyota concealed the
25 defect. Additionally, these confirmed SUA events revealed another aspect of the
26 defect – the failure of the vehicle's diagnostic tools to capture the malfunction. In
27 other words, no diagnostic trouble code ("DTC") or fault code was triggered during
28

1 these SUA events. A properly designed and manufactured vehicle would trigger a
2 fault when a SUA event occurs and force the vehicle into a “limp home” mode.

3 26. As the long-concealed SUA defect finally began to see the light of day
4 and the public realized that Toyota had no fail-safe mechanisms to prevent SUA, the
5 value of Toyota cars diminished. Many consumers sought to return their cars out of
6 fear that SUA could occur and cause catastrophic injury or death. One class member
7 and SUA victim wrote: “I drive a 4 year old and 3 year old child around and am
8 extremely thankful they were not in the car.... Had this happened on the freeway,
9 we would have all been dead.” Her request for the “original purchase price of the car
10 refunded” was rejected.⁶ Her concerns and request for revocation of her purchase is
11 not an isolated incident. Toyota has refused to take class members’ vehicles back,
12 and has refused to and cannot provide an adequate repair.
13
14

15 27. Plaintiffs seek class action status pursuant to Fed. R. Civ. P. 23(b)(2)
16 and (b)(3) on behalf of nationwide Consumer and Commercial Classes of Toyota
17 vehicle owners/lessors of all vehicles with ETCS.
18

19 28. Toyota does substantial business in California, the principal offices of
20 Toyota Motor Sales, U.S.A., Inc. (“TMS”) are in California, and much of the
21 conduct that forms the basis of the complaint emanated from Toyota’s headquarters
22 in Torrance, California. California has a larger percentage of class members than
23 any other state.
24

25 29. The consumer class members (“Consumer Class”) assert claims under
26 California law under the Consumer Legal Remedies Act, CAL. CIV. CODE § 1750;
27

28 ⁶ TOY-MDLID90011054.

1 California Unfair Competition Law, CAL. BUS. & PROF. CODE § 17200; California
2 False Advertising Law, CAL. BUS. & PROF. CODE § 17500; Breach of Express
3 Warranty, CAL. COM. CODE § 2313; Breach of Implied Warranty of Merchantability,
4 CAL. COM. CODE § 2314; Revocation of Acceptance, CAL. COM. CODE § 2608;
5 Magnuson-Moss Warranty Act, 15 U.S.C. § 2301; Common Law Breach of
6 Contract; Fraud by Concealment and Unjust Enrichment.
7

8 30. The non-consumer economic loss class members (“Commercial Class”)
9 assert claims under California law under the California Unfair Competition Law,
10 CAL. BUS. & PROF. CODE § 17200; CAL. BUS. & PROF. CODE § 17500; Breach of
11 Express Warranty, CAL. COM. CODE § 2313; Breach of Implied Warranty of
12 Merchantability, CAL. COM. CODE § 2314; Revocation of Acceptance, CAL. COM.
13 CODE § 2608; Common Law Breach of Contract; Fraud by Concealment and Unjust
14 Enrichment.
15

16 31. In the event California law does not apply on a nationwide basis,
17 Plaintiffs assert the laws of the States and the District of Columbia as set forth
18 below.
19

20 32. Plaintiffs have reviewed their potential legal claims and causes of action
21 against the Defendants and have intentionally chosen only to pursue claims based on
22 state-law.
23

24 **II. JURISDICTION AND VENUE**

25 33. This Court has subject matter jurisdiction pursuant to the Class Action
26 Fairness Act of 2005, 28 U.S.C. § 1332(d), because at least one class member is of
27 diverse citizenship from one Defendant, there are more than 100 class members
28

1 nationwide; and the aggregate amount in controversy exceeds \$5,000,000 and
2 minimal diversity exists.

3 34. Venue is proper in this District under 28 U.S.C. § 1391(a) because a
4 substantial part of the events or omissions giving rise to the claims occurred and/or
5 emanated from this District, and Defendants have caused harm to class members
6 residing in this District.
7

8 **III. PARTIES**

9 **A. Consumer Plaintiffs**

10 35. Plaintiff Kathleen Atwater is a resident and citizen of California. She
11 owned a 2009 Toyota RAV4 Sport. After learning about the risk of SUA, Ms. Atwater
12 called Toyota's Customer Experience Center and was assigned claim number
13 1001133126. Ms. Atwater's RAV4 was included in the "sticky pedal" recall. Pursuant
14 to the recall, Ms. Atwater's local Toyota dealership installed an accelerator
15 reinforcement bar. At that time, she asked a Toyota service advisor if the installation
16 of the accelerator reinforcement bar would eliminate the risk of SUA. The service
17 advisor responded that "to be honest" he did not believe the "shim" would suffice
18 because he thought the problem was probably electronic. Ms. Atwater asked both her
19 dealership and Toyota to take back the RAV4; neither would do so. On February 13,
20 2010, Ms. Atwater traded in her 2009 RAV4 for a 2010 Ford Fusion. Ms. Atwater
21 received less for the sale of her RAV4 than she would have received if the vehicle did
22 not have a SUA defect. She saw advertisements for Toyota vehicles on television, in
23 magazines, on billboards, in brochures at the dealership, and on the Internet for several
24 years before she purchased her Toyota RAV4 Sport on April 5, 2009. Although she
25 does not recall the specifics of the many Toyota advertisements she saw before she
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1 purchased her RAV4 Sport, she does recall that safety and reliability were consistent
2 themes across the advertisements she saw. Those representations about safety and
3 reliability influenced her decision to purchase her RAV4 Sport. She also reviewed the
4 window sticker affixed to the window of her RAV4 Sport. Had those advertisements,
5 window sticker, or any other materials disclosed that Toyota vehicles could accelerate
6 suddenly and dangerously out of the driver's control and lacked a fail-safe mechanism
7 to overcome this, she would not have purchased her RAV4 Sport.
8

9 36. Plaintiff Dale Baldisseri is a resident and citizen of California. He owns
10 a 2009 Toyota Camry. In November 2009, Mr. Baldisseri received a notice from
11 Toyota that described UA. Mr. Baldisseri was concerned, based on the notice, about
12 UA, and eventually rented a car rather than continuing to drive his Camry. Mr.
13 Baldisseri called Toyota's Customer Experience Center and asked that Toyota
14 supply him with a substitute car, but Toyota refused. Mr. Baldisseri and his wife are
15 afraid to drive the Camry because of its SUA defect, so the vehicle has remained
16 parked since December 2009. He saw advertisements for Toyota vehicles on
17 television, in magazines, on billboards, in brochures at the dealership, and on the
18 Internet during the five to ten years before he purchased his Toyota Camry on
19 September 1, 2008. Although he does not recall the specifics of the many Toyota
20 advertisements he saw before he purchased his Camry, he does recall that safety and
21 reliability were a very frequent theme across the advertisements he saw. Those
22 advertisements about safety and reliability influenced his decision to purchase his
23 Camry. Had those advertisements or any other materials disclosed that Toyota
24 vehicles could accelerate suddenly and dangerously out of the driver's control, and
25 lacked a fail-safe mechanism to overcome this, he would not have purchased his
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1 Camry. He certainly would not have paid as much for it, but regardless of that, he
2 wouldn't have purchased it.

3 37. Plaintiffs Joel and Lucy Barker are residents and citizens of Washington
4 State and own a 2010 Toyota Corolla. The Barkers purchased their Corolla on March
5 3, 2010. The dealer did not tell the Barkers that their Corolla was subject to the
6 Toyota recall, and they did not become aware of this fact until they registered the
7 Corolla at the Toyota website. Dismayed with the dealer's failure to disclose the
8 recall at the time of sale, the Barkers met with the general manager of their dealer on
9 March 9, 2010, to discuss their concerns. At the meeting, the Barkers requested that
10 the dealer repurchase the Corolla and return their cash down payment along with the
11 trade in allowance, or at a minimum address their concerns about the car's resale
12 value. The dealer refused to repurchase the car or address their concerns about the
13 resale value. The Barkers saw advertisements for Toyota vehicles on television, in
14 magazines, on billboards, in brochures at the dealership, and display ads while
15 driving past the dealership during the 10 years before they purchased their Toyota
16 Corolla on March 3, 2010. Although they do not recall the specifics of the many
17 Toyota advertisements they saw before they purchased their Corolla, they do recall
18 that safety and reliability were a consistent theme across the advertisements they
19 saw. Those representations about safety and/or reliability influenced their decision
20 to purchase their Corolla. Had those advertisements or any other materials disclosed
21 that Toyota vehicles could accelerate suddenly and dangerously out of the driver's
22 control and lacked a fail-safe mechanism to overcome this, they would not have
23 purchased their Corolla. They certainly would not have paid as much for it.
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1 38. Plaintiff Richard Benjamin is a resident and citizen of Missouri. He
2 owns a 2007 Toyota Sienna. Mr. Benjamin began investigating a trade of his 2007
3 Sienna for a 2011 Sienna just before the recalls were made public. He has seen his
4 trade-in value drop \$2,000 since the recalls according to KELLEY BLUE BOOK, NADA
5 GUIDE, and Edmunds.com. Mr. Benjamin saw advertisements for Toyota vehicles on
6 television, in magazines, on billboards, in brochures at the dealership, and on the
7 Internet for several years before he purchased his Toyota Sienna on October 25,
8 2007. Although he does not recall the specifics of the many Toyota advertisements
9 he saw before he purchased his Sienna, he recalls that safety and reliability were a
10 consistent theme across the advertisements he saw. Those representations about
11 safety and reliability influenced his decision to purchase his Sienna. Had those
12 advertisements or any other materials disclosed that Toyota vehicles could accelerate
13 suddenly and dangerously out of the driver's control and lacked a fail-safe
14 mechanism to overcome this, he would not have purchased his Toyota Sienna, or he
15 would not have paid as much for it.

16 39. Plaintiff Brandon Bowron is a resident and citizen of Arizona. He
17 owned a 2007 Lexus IS 350. He sold his Lexus on July 7, 2010. Mr. Bowron
18 received less value for the car due to the SUA defect. Mr. Bowron saw
19 advertisements for Toyota vehicles on television, in magazines, on billboards, in
20 brochures at the dealership, and on the Internet during the six to eight months before
21 he purchased his Lexus IS 350. Although he does not recall the specifics of the many
22 Toyota advertisements he saw before he purchased his IS 350, he recalls that safety
23 and reliability were a consistent theme across the advertisements he saw.
24 Those representations about safety and reliability influenced his decision to purchase
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1 his Lexus IS 350. Had those advertisements or any other materials disclosed that
2 Lexus vehicles could accelerate suddenly and dangerously out of the driver's control
3 and lacked a fail-safe mechanism to overcome this, he would not have purchased his
4 Lexus IS 350, and he would not have paid as much for it.

5
6 40. Plaintiff Karina Brazdys is a resident and citizen of California. She
7 owns a 2009 Toyota Highlander. In April 2010, Ms. Brazdys experienced an SUA
8 incident. While driving to work, Ms. Brazdys was going approximately 65 mph on
9 the highway when her car suddenly accelerated to 85 mph. Ms. Brazdys was able to
10 slow the car by applying the brake. During the 18 months leading up to the purchase
11 of her Toyota Highlander in June 2009, Ms. Brazdys saw advertisements for Toyota
12 vehicles in magazines, in brochures at the dealership, and on Toyota's website.
13 Although she does not recall the specifics of the many Toyota advertisements she
14 saw before she purchased her Highlander, she does recall that safety and reliability
15 were consistent themes across the advertisements she saw. Those representations
16 about safety and reliability influenced her decision to purchase her Highlander. Had
17 those advertisements or any other materials disclosed that Toyota vehicles could
18 accelerate suddenly and dangerously out of the driver's control and lacked a fail-safe
19 mechanism to overcome this, she would not have purchased her Highlander.
20
21

22 41. Plaintiff Ebony Brown is a resident and citizen of Illinois. She owns a
23 2009 Toyota Camry. Ms. Brown saw advertisements for Toyota vehicles on
24 television, in magazines, on billboards, in brochures at the dealership, on the
25 Internet, in newspapers, and on banners in front of the dealership, during the two
26 years before she purchased her Camry on July 26, 2008. Although she does not recall
27 the specifics of the many Toyota advertisements she saw before she purchased her
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1 Camry, she does recall that safety and reliability were a consistent theme across the
2 advertisements she saw. Those representations about safety and reliability
3 influenced her decision to purchase her Camry. Had those advertisements or any
4 other materials disclosed that Toyota vehicles could accelerate suddenly and
5 dangerously out of the driver's control and lacked a fail-safe mechanism to
6 overcome this, she would not have purchased her Camry. She certainly would not
7 have paid as much for it.

9 42. Plaintiffs David and Arlene Caylor are residents of Arizona. They own a
10 2002 Toyota Camry. On June 2, 2010, Mrs. Caylor experienced a collision as a result
11 of SUA. Mrs. Caylor was backing out of a parking space when her car rapidly
12 accelerated. She shot back two or three car lengths and hit a parked car. The Caylors
13 saw advertisements for Toyota vehicles on television, in magazines, on billboards, in
14 brochures at the dealership, and on the Internet, several years before they purchased
15 their Toyota Camry on July 6, 2002. Although they do not recall the specifics of the
16 many Toyota advertisements they saw before they purchased their Camry, they recall
17 that safety and reliability were a consistent theme across the advertisements they
18 saw. Those representations about safety and reliability influenced their decision to
19 purchase their Camry. Had those advertisements or any other materials disclosed
20 that Toyota vehicles could accelerate suddenly and dangerously out of the driver's
21 control and lacked a fail-safe mechanism to overcome this, they would not have
22 purchased their Camry.

25 43. Plaintiff Susan Chambers is a resident and citizen of Iowa. She owns a
26 2005 Toyota Camry. On November 12, 2009, Ms. Chambers experienced a collision
27 as a result of SUA. Ms. Chambers had slowed her vehicle to a near stop to park her
28

1 car. Just before she put the car in park, the car suddenly accelerated and slammed
2 into the car parked in front of her. Ms. Chambers had pressed the brake, but it had no
3 effect on the vehicle's speed. Ms. Chambers' Camry had Toyota floor mats that were
4 secured by both clips at the time of the collision. Ms. Chambers called her dealer,
5 which told her to call Toyota's Customer Experience Center. Ms. Chambers called
6 Toyota's Customer Experience Center. Toyota subsequently inspected the vehicle,
7 and on December 1, 2009, Toyota wrote a letter to Ms. Chambers stating there was
8 nothing wrong with the vehicle. During the years before she purchased her Toyota
9 Camry on November 17, 2008, Ms. Chambers saw advertisements for Toyota
10 vehicles on television, in magazines, and on billboards. Furthermore, during the
11 years before she purchased her Toyota Camry, she viewed the news regularly on
12 television, in magazines, and on the Internet. Had these advertisements, news
13 reports, or any other materials disclosed that Toyota vehicles could accelerate
14 suddenly and dangerously out of the driver's control and lacked a fail-safe
15 mechanism to overcome this, she probably would not have purchased her Camry.
16 She certainly would not have paid as much for it.

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20 44. Plaintiff Gary Davis is a resident and citizen of Tennessee, and he owns
21 a 2008 Toyota Camry LE. Mr. Davis purchased his Toyota based on its reputation
22 for safety. Mr. Davis saw advertisements for Toyota vehicles on television, in
23 magazines, on billboards, in brochures at the dealership, and on the Internet for
24 several months, if not years, before he purchased his Camry on January 17, 2008.
25 Although he does not recall the specifics of the many Toyota advertisements he saw
26 before he purchased his Camry, he does recall that safety and reliability were
27 consistent themes across the advertisements he saw. Those representations about
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1 safety and reliability influenced his decision to purchase his Camry. Had those
2 advertisements or any other materials disclosed that Toyota vehicles could accelerate
3 suddenly and dangerously out of the driver's control and lacked a fail-safe
4 mechanism to overcome this, he would not have purchased his Camry. He certainly
5 would not have paid as much for it.
6

7 45. Plaintiffs Rocco and Bridie Doino are residents and citizens of New
8 York. They owned a 2010 Toyota Camry. On April 21, 2010, the Doinos
9 experienced a collision caused by SUA while entering a parking lot. The Camry
10 suddenly accelerated and landed on two parked cars. The Camry was totaled. When
11 purchasing their car, the dealer assured the Doinos that SUA was a floor mat
12 problem, and that they would not have a floor mat or SUA issue. The Doinos
13 suffered economic loss because they were not fully compensated for the value of
14 their Toyota Camry. The Doinos saw advertisements for Toyota vehicles on
15 television and in brochures at the dealership during the period before they purchased
16 their Camry. They also reviewed the window sticker and warranty information.
17 Although they do not recall the specifics of the many Camry advertisements they
18 saw before they purchased their Camry, they do recall that safety was a consistent
19 theme across the advertisements they saw. Those representations about safety
20 influenced their decision to purchase their Camry. Had those advertisements,
21 window sticker, warranty information, or any other materials disclosed that Camry
22 vehicles could accelerate suddenly and dangerously out of the driver's control and
23 lacked a fail-safe mechanism to overcome this, they would not have purchased their
24 Camry. They certainly would not have paid as much for it.
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1 46. Plaintiff Alexander Farrugia is a resident and citizen of New York. He
2 owns a 2008 Toyota Highlander. He saw advertisements for Toyota vehicles on
3 television, in magazines, on billboards, in brochures at the dealership, and on the
4 Internet during the years before he purchased his Highlander in November 2007.
5 Although he does not recall the specifics of the many Toyota advertisements he saw
6 before he purchased his Highlander, he does recall that safety and reliability were a
7 consistent theme across the advertisements he saw. Those representations about
8 safety and reliability influenced his decision to purchase his Highlander. Had those
9 advertisements or any other materials disclosed that Toyota vehicles could accelerate
10 suddenly and dangerously out of the driver's control and lacked a fail-safe
11 mechanism to overcome this, he would not have purchased his Highlander. He
12 certainly would not have paid as much for it.
13
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15 47. Plaintiff Carole Fisher is a resident and citizen of Nevada and owns a
16 2010 Toyota Prius. Ms. Fisher saw advertisements for Toyota vehicles on television
17 for several months before she purchased her Prius on June 6, 2009. Although she
18 does not recall the specifics of the many Toyota advertisements she saw before she
19 purchased her Prius, she does recall that safety and reliability were consistent themes
20 across the advertisements she saw. Those representations about safety and reliability
21 influenced her decision to purchase her Prius. Had those advertisements or any other
22 materials disclosed that Toyota vehicles could accelerate suddenly and dangerously
23 out of the driver's control and lacked a fail-safe mechanism to overcome this, she
24 would not have purchased her Prius. She certainly would not have paid as much for
25 it.
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1 48. Plaintiff Maureen Fitzgerald is a resident and citizen of Michigan. She
2 owns a 2009 Toyota Corolla LE. The first time Ms. Fitzgerald drove the Corolla with
3 the salesman, it accelerated at the corner to turn into a busy four-lane road. She
4 slammed on the brakes and remarked to the salesman that everything felt too
5 “loose.” The salesman told her that she just had to “get used to it.” Ms. Fitzgerald
6 then experienced an SUA on October 6, 2010. While coasting and looking for a
7 parking spot, the car suddenly accelerated. She applied the brake, but the car did not
8 respond. She swerved into a parking space to avoid hitting a pedestrian and another
9 car. She hit the handicapped bar, and the car stopped so violently that her dog nearly
10 went through the windshield. Ms. Fitzgerald saw advertisements for Toyota vehicles
11 on television, in magazines, on billboards, in brochures at the dealership, and on the
12 Internet for several years before she purchased her Corolla on March 31, 2009.
13 Although she does not recall the specifics of the many Toyota advertisements she
14 saw before she purchased her Corolla, she does recall that safety and/or reliability
15 were consistent themes across the advertisements she saw. Those representations
16 about safety and/or reliability influenced her decision to purchase her Corolla. Had
17 those advertisements or any other materials disclosed that Toyota vehicles could
18 accelerate suddenly and dangerously out of the driver’s control and lacked a fail-safe
19 mechanism to overcome this, she would not have purchased her Corolla. She
20 certainly would not have paid as much for it.

21 49. Plaintiff John Flook is a resident and citizen of Maryland. He owns a
22 2010 Toyota Corolla. He saw advertisements for Toyota vehicles on television, in
23 magazines, on billboards, in brochures at the dealership, and on the Internet during
24 the 17 years before he purchased his Corolla on July 10, 2009. Although he does not
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1 recall the specifics of the many Toyota advertisements he saw before he purchased
2 his Corolla, he does recall that safety and reliability were a consistent theme across
3 the advertisements he saw. Those representations about safety and reliability
4 influenced his decision to purchase his Corolla. Had those advertisements or any
5 other materials disclosed that Toyota vehicles could accelerate suddenly and
6 dangerously out of the driver's control and lacked a fail-safe mechanism to
7 overcome this, he would not have purchased his Corolla. He certainly would not
8 have paid as much for it.
9

10 50. Plaintiff Kevin Funez is a resident and citizen of Florida. He owns a
11 2006 Toyota Avalon. He saw advertisements for Toyota vehicles on television, in
12 magazines, on billboards, in brochures at the dealership, and on the Internet during
13 the two years before he purchased his Avalon on August 2006. He also reviewed his
14 window sticker. Although he does not recall the specifics of the many Toyota
15 advertisements he saw before he purchased his Avalon, he does recall that reliability
16 was a consistent theme across the advertisements he saw. Those representations
17 about reliability influenced his decision to purchase his Avalon. Had those
18 advertisements, window sticker, or any other materials disclosed that Toyota
19 vehicles could accelerate suddenly and dangerously out of the driver's control and
20 lacked a fail-safe mechanism to overcome this, he probably would not have
21 purchased his Avalon. He certainly would not have paid as much for it.
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24 51. Plaintiff John Geddis is a resident and citizen of Washington. He owns a
25 2010 Toyota RAV4. Within a month of his purchase, the news broke about the
26 acceleration issues. Mr. Geddis's vehicle only has about 600 miles on it, but it sits in
27 the driveway practically unused for fear of an SUA event. When the recall repairs
28

1 were performed by the dealer, Mr. Geddis told the service person that he wanted to
2 be rid of the car and that he wanted all of his money back, but the dealer refused to
3 accept the RAV4. He believes that the value of the vehicle is greatly diminished
4 because of the recall. Mr. Geddis saw advertisements for Toyota vehicles on
5 television, in magazines, in brochures at the dealership, and on the Internet during
6 the six to eight months before he purchased his Toyota RAV4 on October 24, 2009.
7 Although he does not recall the specifics of the many Toyota advertisements he saw
8 before he purchased his RAV4, he recalls that safety and reliability were a consistent
9 theme across the advertisements he saw. Those representations about safety and
10 reliability influenced his decision to purchase his Toyota RAV4. Had those
11 advertisements or any other materials disclosed that Toyota vehicles could accelerate
12 suddenly and dangerously out of the driver's control and lacked a fail-safe
13 mechanism to overcome this, he would not have purchased his RAV4, and he would
14 not have paid as much for it.

17 52. Plaintiff Susan Gonzalez is a resident and citizen of Arizona. She owns
18 a 2010 Toyota Corolla that she purchased in November 2009. She does not feel safe
19 driving the car. Although she had planned to share the car with her son when she
20 purchased it, she cannot let her 16-year-old son drive the car out of safety concerns.
21 Ms. Gonzalez contacted Toyota's Customer Experience Center about returning the
22 car; they told her to arbitrate. Ms. Gonzalez sought to return the car and arbitrated
23 her claim with the National Center for Dispute Settlement, but lost. She saw
24 advertisements for Toyota vehicles on television, in magazines, on billboards, and in
25 brochures at the dealership for several years before she purchased her Corolla on
26 November 7, 2009. Although she does not recall the specifics of the many Toyota
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1 advertisements she saw before she purchased her Corolla, she does recall that safety
2 and reliability were consistent themes across the advertisements she saw.
3 Those representations about safety and reliability influenced her decision to purchase
4 her Toyota Corolla. Had those advertisements or any other materials disclosed that
5 Toyota vehicles could accelerate suddenly and dangerously out of the driver's
6 control and lacked a fail-safe mechanism to overcome this, she would not have
7 purchased her Corolla. She certainly would not have paid as much for it.

9 53. Plaintiff Donald Graham is a resident and citizen of Colorado. He owns
10 a 2007 Toyota Prius. Mr. Graham saw advertisements for Toyota vehicles on
11 television, in magazines, on billboards, in brochures at the dealership, and on the
12 Internet for several years before he purchased his Prius on May 4, 2007. Although he
13 does not recall the specifics of the many Toyota advertisements he saw before he
14 purchased his Prius, he recalls that safety and reliability were a consistent theme
15 across the advertisements he saw. Those representations about safety and reliability
16 influenced his decision to purchase his Prius. Had those advertisements or any other
17 materials disclosed that Toyota vehicles could accelerate suddenly and dangerously
18 out of the driver's control and lacked a fail-safe mechanism to overcome this, he
19 would not have purchased his Prius.

22 54. Plaintiff Joseph Hauter is a resident and citizen of California. He owns a
23 2008 Toyota Tundra. Mr. Hauter experienced two SUA incidents. The first incident,
24 in late December 2009 or early January 2010, occurred when Mr. Hauter was pulling
25 into a gas station. When Mr. Hauter had his foot on the brake pedal, the car suddenly
26 accelerated. He slammed on his brakes, but his engine continued to race. When his
27 vehicle slowed down, he was able to put the vehicle in park. The second incident
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1 occurred on January 19, 2010, when Mr. Hauter was approaching a left turn lane and
2 began to apply the brakes. The vehicle suddenly accelerated. Mr. Hauter stood on the
3 brake pedal with both feet while the vehicle continued to lurch forward, until the
4 vehicle finally slowed and stopped. After the second incident, Mr. Hauter notified his
5 dealer of the two incidents. The dealer performed the recall repair for the pedal on
6 March 30, 2010. Mr. Hauter saw advertisements for Toyota vehicles on television,
7 in magazines, on billboards, in brochures at the dealership, and on the Internet during
8 the many years before he purchased his Tundra on March 8, 2008. Although he does
9 not recall the specifics of the many Toyota advertisements he saw before he
10 purchased his Tundra, he recalls that safety and reliability were consistent themes
11 across the advertisements he saw. Those representations about safety and reliability
12 influenced his decision to purchase his Tundra. Had those advertisements or any
13 other materials disclosed that Toyota vehicles could accelerate suddenly and
14 dangerously out of the driver's control and lacked a fail-safe mechanism to
15 overcome this, he would not have purchased his Tundra. He certainly would not
16 have paid as much for it.

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20 55. Plaintiff Matthew Heidenreich is a resident and citizen of Ohio and
21 leased a 2010 Toyota Corolla. In spring 2010, he experienced three SUA incidents.
22 The first incident occurred on March 5, 2010, when Mr. Heidenreich was sitting in a
23 bank drive-through. The car was in park when the engine revved twice to 3000
24 RPM. Both times it returned to idle on its own. The second incident occurred on
25 April 1, 2010, while Mr. Heidenreich was at the post office. Mr. Heidenreich put the
26 car in park and got out to drop mail in the box. The engine revved while he was out
27 of the vehicle. He turned the car off, then on again, and the car idled normally. The
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1 third incident occurred on April 28, 2010, after Mr. Heidenreich backed the car out
2 of his garage. The car idled at about 2000 RPM. He turned the engine off and back
3 on, the tachometer redlined for three separate starts, and the engine “sounded like it
4 was going to explode.” Mr. Heidenreich refuses to drive the vehicle again. All three
5 incidents were after Mr. Heidenreich submitted his vehicle for recall repairs. Mr.
6 Heidenreich asked the dealership to cancel his lease and return his money. Toyota
7 refuses to cancel the lease, but offered to let him trade the car in for another.
8 Because the new car would have cost him more money, he declined. In May 2010,
9 Mr. Heidenreich sold his 2010 Corolla to NHTSA for research and lost money on the
10 sale. Mr. Heidenreich saw advertisements misrepresenting the safety of Toyota
11 vehicles on television, in brochures at the dealership, and on the Internet for years
12 prior to leasing his Toyota on September 30, 2009. Based on
13 these misrepresentations as to the safety of Toyota vehicles, Mr. Heidenreich leased
14 his 2010 Toyota Corolla. He also reviewed the window sticker, warranty
15 information, and news reports about Toyota, which he understands are based on
16 press releases from Toyota. Had these advertisements, window sticker, warranty,
17 news reports or any other materials disclosed that Toyota vehicles could accelerate
18 suddenly and dangerously out of the driver’s control and lacked a fail-safe
19 mechanism to overcome this, Mr. Heidenreich would not have leased his 2010
20 Corolla and/or paid as much for it.

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24 56. Plaintiff Connie A. Kamphaus is a resident and citizen of Ohio. She
25 was the lessee of a 2009 Toyota Camry and currently is the lessee of a 2010 Toyota
26 Camry. Mrs. Kamphaus’s late husband, Thomas Kamphaus, experienced the
27 following SUA incidents with the 2009 Camry: on January 15, 2010, the vehicle
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1 accelerated on its own in a parking lot, but he forced the brake down and shifted into
2 the parking gear; on February 9, 2010, the engine revved and the brake appeared to
3 freeze, but he applied the brakes as hard as possible and was able to shift into the
4 parking gear; and on February 10, 2010, he experienced a nearly identical incident to
5 the day before. These last two incidents occurred after the recall repair was
6 performed. The Kamphauses took the vehicle to Performance Toyota after the
7 incidents and were told the problem was fixed. On February 13, 2010, they called
8 Performance Toyota to complain and requested to get out of the remaining lease.
9 The dealership asked them to sign an arbitration agreement and did not provide them
10 with a loaner vehicle. On February 19, 2010, the Kamphauses traded in the 2009
11 Toyota Camry for the 2010 Toyota Camry. On March 14, 2010, the 2010 Toyota
12 Camry suddenly accelerated in a parking lot and jumped a concrete wheel stop. The
13 Kamphauses called Performance Toyota shortly after this incident. They put the
14 2010 Camry in storage because they were afraid to drive it, and they had to purchase
15 a replacement vehicle. The Kamphauses paid more for their lease than they would
16 have otherwise agreed to pay, but were forced to agree to the lease terms to trade in
17 their 2009 Camry that had three SUA incidents. The Kamphauses paid more for their
18 lease of the 2010 Camry than they would have paid, or they would not have leased it
19 at all, if they had known the 2010 Camry also had the SUA defect. The Kamphauses
20 have paid for a good, their Toyota, that has failed its essential purpose. Mrs.
21 Kamphaus saw advertisements misrepresenting the safety of Toyota vehicles on
22 television in magazines and on billboards for years before she leased her Toyotas on
23 June 22, 2008 and February 19, 2010. Based on these misrepresentations as to the
24 safety of Toyota vehicles, Mrs. Kamphaus leased her 2009 Camry and 2010 Camry.

1 She also reviewed the window stickers on the vehicles and their warranty
2 information. Had these advertisements, window stickers, warranty information or
3 any other materials disclosed that Toyota vehicles could accelerate suddenly and
4 dangerously out of the driver's control and lacked a fail-safe mechanism to
5 overcome this, she would not have leased her 2009 Camry and 2010 Camry and/or
6 paid as much for them.
7

8 57. Plaintiffs Victoria and Barry Karlin are residents and citizens of
9 Colorado. They were the owners of a 2007 Toyota Prius, which was totaled on
10 August 14, 2009, as a result of SUA. Mrs. Karlin was parked with her foot on the
11 brake. She put the transmission in drive, and the car surged forward, crashing
12 through a wooden fence beside her driveway. The car continued downhill, crashed
13 into a tree and was totaled. The floor mat was still hooked in place after the accident.
14 They reported the accident to Toyota, but the car had been disposed of, so Toyota
15 denied the claim of loss. The Karlins suffered economic loss because they were not
16 fully compensated for the value of the Prius. The Karlins saw advertisements for
17 Toyota Prius vehicles generally in the media during the period before they purchased
18 their Prius. They also reviewed the window sticker and warranty information.
19 Although they do not recall the specifics of the many Prius advertisements they saw
20 before they purchased their Prius, they do recall that safety and reliability were a
21 consistent theme across the advertisements they saw. Those representations about
22 safety and reliability influenced their decision to purchase their Prius and the
23 previous Toyotas they had owned. Had those advertisements, window sticker,
24 warranty information, or any other materials disclosed that Prius vehicles could
25 accelerate suddenly and dangerously out of the driver's control and lacked a fail-safe
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1 mechanism to overcome this, they would not have purchased their Prius. They
2 certainly would not have paid as much for it.

3 58. Plaintiffs John and Mary Laidlaw are residents and citizens of New
4 York. They leased a 2010 Toyota Camry LE in December 2009. After the sudden
5 acceleration issues were uncovered by the media, the Laidlaws were afraid to drive
6 the vehicle. They took it back to the dealer with just 980 miles on it and having
7 leased the car for just one month. The dealer refused to give them their money back.
8 The Laidlaws surrendered the vehicle by leaving it in the dealer's lot. Had
9 advertisements or any other materials disclosed that Toyota vehicles could accelerate
10 suddenly and dangerously out of the driver's control and lacked a fail-safe
11 mechanism to overcome this, they would not have purchased their Camry.
12

13 59. Plaintiff Robert Navarro is a resident and citizen of Ohio. He owns a
14 2010 Toyota Avalon Limited. Mr. Navarro asked his dealer and the Toyota
15 Customer Experience Center to take the car back, but both the dealer and the
16 representative from Toyota refused. The representative from the Toyota Customer
17 Experience Center directed Mr. Navarro to the National Center for Dispute
18 Settlement ("NCDS") to submit a claim; the NCDS told Mr. Navarro that they could
19 not resolve his type of claim. Mr. Navarro saw advertisements for Toyota vehicles
20 on television, in magazines, on billboards, in brochures at the dealership, and on the
21 Internet for several years before he purchased his Avalon on December 23, 2009.
22 Although he does not recall the specifics of the many Toyota advertisements he saw
23 before he purchased his Avalon, he recalls that safety and reliability were consistent
24 themes across the advertisements he saw. Those representations about safety and/or
25 reliability influenced his decision to purchase his Avalon. Had those advertisements
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1 or any other materials disclosed that Toyota vehicles could accelerate suddenly and
2 dangerously out of the driver's control and lacked a fail-safe mechanism to overcome
3 this, he would not have purchased his Avalon. He certainly would not have paid as
4 much for it.

5
6 60. Plaintiff Carl Nyquist is a resident and citizen of Nebraska. He owns a
7 2006 Toyota Avalon. Mr. Nyquist twice observed the Avalon's engine, while in
8 park, increase idle speed to redline by itself; he did not apply his foot to the
9 accelerator. After these incidents, he was driving on the interstate with his wife at
10 approximately 75 mph when the Avalon accelerated to 90 mph. He turned the car off
11 and slowed to 75 mph, but then turned the car back on and it again accelerated to 90
12 mph. After turning the car off and on again, the Avalon accelerated normally. He
13 took it to a dealer in Lincoln, Nebraska and a dealer in Scott's Bluff, Nebraska, but
14 both dealers said they found nothing wrong. He contacted Toyota's Customer
15 Experience Center, which also stated there was nothing wrong with the vehicle. Mr.
16 Nyquist filed a complaint with the National Center for Dispute Resolution and
17 requested he be allowed to return the Avalon and be provided a replacement car, but
18 the arbitrator denied his claim. Mr. Nyquist saw advertisements for Toyota vehicles
19 on television, in magazines, on billboards, in brochures at the dealership, and on the
20 Internet during the ten years before he purchased his Toyota Avalon on or about
21 December 6, 2007. Although he does not recall the specifics of the many Toyota
22 advertisements he saw before he purchased his Avalon, he recalls that safety and
23 reliability were consistent themes across the advertisements he saw. Those
24 representations about safety and reliability influenced his decision to purchase his
25 Avalon. Had those advertisements or any other materials disclosed that Toyota
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1 vehicles could accelerate suddenly and dangerously out of the driver's control and
2 lacked a fail-safe mechanism to overcome this, he probably would not have
3 purchased his Avalon. He certainly would not have paid as much for it.

4 61. Plaintiff Peggie Perkin is a resident and citizen of California. She owned
5 a 2005 Lexus ES 330. She was involved in a collision as a result of SUA on May 24,
6 2010. Ms. Perkin was driving between 5-10 mph in a parking lot when the engine
7 revved and the car suddenly accelerated rapidly up to 35 mph, despite application of
8 the brakes. Ms. Perkin made a 90-degree turn to avoid a collision with vehicles and
9 pedestrians around the store front, but ended up hitting three cars and then stopping.
10 She tried to turn off the car with such force that the key broke. After the collision,
11 Ms. Perkin demanded in writing that either the dealer or Toyota Motor Sales, U.S.A.,
12 Inc. repurchase the vehicle; neither did so. After the ES 330 was repaired, Ms. Perkin
13 traded it in and received substantially less value than she would have received if the
14 vehicle did not have the SUA defect. Ms. Perkin saw advertisements for Lexus
15 vehicles on television, in magazines, on billboards, in brochures at the dealership,
16 and on the Internet during the year before she purchased her Lexus ES 330 on
17 February 28, 2009. Although she does not recall the specifics of the many Lexus
18 advertisements she saw before she purchased her ES 330, she does recall that
19 reliability was a consistent theme across the advertisements she saw.
20

21 Those representations about reliability influenced her decision to purchase her ES
22 330. Had those advertisements or any other materials disclosed that Lexus vehicles
23 could accelerate suddenly and dangerously out of the driver's control and lacked a
24 fail-safe mechanism to overcome this, she would not have purchased her ES 330.
25 She certainly would not have paid as much for it.
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2 62. Plaintiffs Bianca and Steven Prade are residents and citizens of
3 Virginia. They own a 2009 Toyota Camry XLE. Mr. Prade is a police officer for the
4 District of Columbia. On February 2, 2010, he experienced SUA when he attempted
5 to park the Camry in the garage at the Prades' home, causing damage to both the
6 garage and the vehicle's driver-side door. The Prades saw advertisements
7 misrepresenting the safety of Toyota vehicles on television for years prior to
8 purchasing their Camry on July 23, 2008. Based on these misrepresentations as to
9 the safety of Toyota vehicles, Mr. and Mrs. Prade purchased their 2009 Camry.
10 They also reviewed the window sticker, warranty information, and news reports
11 based on press releases issued by Toyota. Had these advertisements, window sticker,
12 warranty information, news reports or any other materials disclosed that Toyota
13 vehicles could accelerate suddenly and dangerously out of the driver's control and
14 lacked a fail-safe mechanism to overcome this, the Prades would not have purchased
15 their 2009 Camry and/or paid as much for it.
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18 63. Plaintiff Sandra Reech is a resident and citizen of Pennsylvania. She
19 owns a 2008 Toyota Tacoma. On March 8, 2009, Ms. Reech experienced SUA; her
20 truck suddenly accelerated while she was traveling down a road. She applied the
21 brakes, but the vehicle did not slow down. When she put all of her weight on the
22 brakes and shifted the vehicle into neutral, the engine continued to rev at high RPMs.
23 She was finally able to steer off the road and stop the vehicle. Ms. Reech wrote a
24 letter to Toyota's Customer Experience Center, and she received a voicemail from a
25 Toyota representative stating she could file an arbitration complaint. Sandra Reech
26 read the window sticker at the time that she and her husband purchased their 2008
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1 Tacoma, and she also follows the news, and understands that Toyota sometimes
2 issues press releases upon which news reports are based. If the window sticker,
3 news reports, or any other materials had disclosed that Toyota vehicles could
4 accelerate suddenly and dangerously out of the driver's control and lacked a fail-safe
5 mechanism to overcome this, she would not have purchased her Tacoma.
6

7 64. Plaintiffs Thomas F. and Catherine A. Roe are residents and citizens of
8 California. They own a 2006 Lexus ES 330. On July 24, 2009, Mrs. Roe experienced
9 a collision as a result of SUA. When she was pulling into a driveway and slowing to
10 a stop, the engine of the car unexpectedly roared, the vehicle surged forward, then
11 crashed over a low cement wall and knocked down a metal rail fence. The car
12 finally came to a rest on top of the collapsed fence with the right front wheel
13 partially submerged in a backyard pool. The Roes sent a letter to Toyota Motor Sales
14 reporting the SUA incident. Toyota stated that the car could not be inspected because
15 it had already been repaired from the collision, and Toyota was "unable to offer
16 further assistance in this matter." The Roes saw advertisements for Lexus vehicles
17 on television and in newspapers during the years prior to purchasing the ES 330 on
18 March 29, 2009. Although they do not recall the specifics of the many Lexus
19 advertisements they saw before they purchased the ES 330, they do recall that safety
20 and reliability were consistent themes across the advertisements they saw. They also
21 reviewed the window sticker on their vehicle, warranty information, and news
22 reports based on information supplied from Toyota press releases. Those
23 representations about safety and reliability influenced their decision to purchase their
24 ES 330. Had those advertisements, window sticker, warranty information, news
25 reports, or any other materials disclosed that Lexus vehicles could accelerate
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1 suddenly and dangerously out of the driver's control and lacked a fail-safe
2 mechanism to overcome this, they would not have purchased their ES 330.

3 65. Plaintiff Barbara J. Saunders is a resident and citizen of Ohio. She
4 owned a 2006 Toyota Avalon and owns a 2009 Toyota Matrix. On May 3, 2008,
5 Ms. Saunders experienced a collision as a result of SUA in her 2006 Toyota Avalon,
6 causing her to lose control of her vehicle and skid into a guardrail and concrete
7 divider. The Avalon was totaled. On February 2, 2009, Ms. Saunders experienced a
8 collision as a result of SUA in her 2009 Toyota Matrix, causing her to rear-end a
9 pick-up truck. On March 11, 2010, Ms. Saunders experienced a second SUA
10 incident in her 2009 Toyota Matrix. The value of her Toyota Matrix has diminished
11 as a result of the SUA defect. Ms. Saunders saw advertisements misrepresenting the
12 safety of Toyota vehicles on television and through direct mail and emails from
13 Toyota during the years prior to when she purchased her Toyotas in August 2006 and
14 on May 23, 2008. Based on these misrepresentations as to the safety and reliability
15 of Toyotas, Ms. Saunders purchased her 2006 Avalon and 2009 Matrix. Ms.
16 Saunders also reviewed the window stickers, warranty information, and news reports
17 based in press releases issued by Toyota. Had these advertisements, window
18 stickers, warranty information, news reports, or any other materials disclosed that
19 Toyota vehicles could accelerate suddenly and dangerously out of the driver's control
20 and lacked a fail-safe mechanism to overcome this, Ms. Saunders would not have
21 purchased her 2006 Avalon and 2009 Matrix and/or paid as much for them.

22 66. Plaintiffs Janette and Tully Seymour are residents and citizens of
23 California. They own a 2002 Lexus ES300. In November or December 2008, Mrs.
24 Seymour experienced a SUA incident when she was pulling out of the garage at her
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1 home. She had her foot on the brake, put the transmission in reverse and then moved
2 her foot off the brake and lightly applied the accelerator. At that moment the vehicle
3 accelerated rapidly, and the car shot out of the garage and down the driveway. Mrs.
4 Seymour sensed the car continuing to accelerate even as she applied the brake. The
5 car traveled the length of the driveway (30-40 feet), and she was unable to stop the
6 car until the rear wheels had extended into the street. Shortly after learning of the
7 accident involving CHP Officer Saylor and his family, Mr. Seymour took the Lexus
8 to the dealership and asked if there was a plan to remedy the SUA problem; the
9 dealership stated there was no problem with this model. The Seymours saw
10 advertisements for Lexus vehicles generally in the media during the period before
11 they leased and then purchased their Lexus ES 300. They also reviewed the window
12 sticker and warranty information. Although they do not recall the specifics of the
13 many Lexus advertisements they saw before they leased and then purchased their
14 Lexus ES 300, they do recall that safety and reliability were a consistent theme
15 across the advertisements they saw. Those representations about safety and
16 reliability influenced their decision to purchase their Lexus ES300. Had those
17 advertisements, window sticker, warranty information, or any other materials
18 disclosed that Lexus ES300 vehicles could accelerate suddenly and dangerously out
19 of the driver's control and lacked a fail-safe mechanism to overcome this, they
20 would not have leased and then purchased their Lexus ES300.

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23
24 67. Plaintiff Mary Ann Tucker is a resident and citizen of California. She
25 owns a 2005 Toyota Camry. She stopped driving the Camry in October 2009 out of
26 safety concerns, and she sold it on March 10, 2010. Ms. Tucker received less for her
27 vehicle than she would have had her Camry not had a SUA defect. Ms. Tucker
28

1 called her dealership, which referred her to the Toyota Customer Experience Center.
2 She called the Toyota Customer Experience Center, which assigned her Case
3 Number 0912136858 and promised to send her paperwork to begin arbitration. Ms.
4 Tucker did not receive the paperwork. During the years prior to Mary Ann Tucker's
5 Toyota Camry purchase on 08/2005, she saw advertisements for Toyota vehicles on
6 television. Ms. Tucker also reviewed the window sticker, warranty information, and
7 news reports based on press releases issued by Toyota. When she purchased her
8 Camry, she was not aware that Toyota vehicles could accelerate suddenly and
9 dangerously out of the driver's control and lacked a fail-safe mechanism to
10 overcome this. Ms. Tucker cannot speculate as to what she would have done had she
11 been in possession of this information, but she would have based her decision on her
12 analysis of the risk, her ability to pay, and alternatives in the market.
13
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15 68. Plaintiff Elizabeth I. Van Zyl is a resident and citizen of Florida. She
16 leases a 2010 Toyota Camry LE. Ms. Van Zyl has experienced SUA incidents over
17 the course of several months. During the SUA incidents, the vehicle surges forward.
18 Ms. Van Zyl has reported the surging to her dealer and to the Toyota Customer
19 Experience Center. Ms. Van Zyl tried to trade in her Toyota for a Honda, but the
20 dealer did not want her Toyota as a trade-in. Ms. Van Zyl paid more for her lease
21 than she would have otherwise agreed to pay had she known of the defect. Ms. Van
22 Zyl paid for a good, her Toyota, that has failed of its essential purpose. She saw
23 advertisements for Toyota vehicles on television, in newspapers, in magazines, in
24 brochures at the dealership, and on the Internet, during the ten years before she
25 leased her Toyota Camry on August 23, 2009. Although Ms. Van Zyl does not recall
26 the specifics of the many Toyota advertisements she saw before she leased her
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1 Camry, she does recall that safety and reliability were a consistent theme across the
2 advertisements she saw. Those representations about safety and reliability
3 influenced her decision to purchase her Camry. Had those advertisements or any
4 other materials disclosed that Toyota vehicles could accelerate suddenly and
5 dangerously out of the driver's control and lacked a fail-safe mechanism to
6 overcome this, she would not have leased her Camry. She certainly would not have
7 paid as much for it.
8

9 69. Plaintiff Frank Visconi is a resident and citizen of Tennessee. He was
10 the owner of a 2007 Toyota Tacoma, which was totaled when Mr. Visconi
11 experienced a SUA collision on June 8, 2007. After Mr. Visconi tapped his brakes
12 to slow down on the highway, the engine accelerated to 7000-8000 RPMs, spinning
13 the vehicle out of control. The vehicle drove into an embankment, started to flip over
14 and was airborne for 35-40 feet. The vehicle then landed on its roof and rolled
15 another three times before stopping. In addition to the SUA collision, Mr. Visconi
16 also experienced the following SUA incidents: on February 9, 2007, his vehicle
17 lurched forward from a stop; on February 12, 2007, his vehicle suddenly accelerated
18 while he was stopped with his foot on the brakes – his rear wheels were spinning
19 uncontrollably and his engine was making loud noises; on April 24, 2007, his vehicle
20 suddenly accelerated while he was braking to slow down on a highway entrance
21 ramp; and on May 23, 2007, his vehicle suddenly accelerated while he was braking
22 to slow down on a downhill. Mr. Visconi took his Tacoma to the dealership twice
23 and was told nothing could be done if they could not replicate the incident. Mr.
24 Visconi talked to the Toyota regional sales manager and asked him to repurchase the
25 vehicle; the manager refused. Mr. Visconi saw advertisements for Toyota vehicles
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1 on television, in magazines, on billboards, in brochures at the dealership, and on the
2 Internet during the years before he purchased his 2007 Toyota Tacoma in October
3 2006. Although he does not recall the specifics of the many Toyota advertisements
4 he saw before he purchased his Tacoma, he does recall that safety and reliability
5 were a consistent theme across the advertisements he saw. Those representations
6 about safety and reliability influenced his decision to purchase his Tacoma. Had
7 those advertisements any other materials disclosed that Toyota vehicles could
8 accelerate suddenly and dangerously out of the driver's control and lacked a fail-safe
9 mechanism to overcome this, he would not have purchased his Tacoma. He certainly
10 would not have paid as much for it.
11

12
13 70. Plaintiffs Dana C. and Douglas W. Weller are residents and citizens of
14 Washington. They were the owners of a 2009 Toyota RAV4 that they sold on March
15 13, 2010. They were unwilling to drive the RAV4 with children in the car due to the
16 SUA defect. The Wellers received less for their trade-in vehicle than they would
17 have had their RAV4 not had a SUA defect. They saw advertisements for Toyota
18 vehicles on television, in magazines, on billboards, in brochures at the dealership,
19 and on the Internet for years, especially during the period while they were
20 researching new cars, before they purchased the Toyota RAV4. Although they do not
21 recall the specifics of the many Toyota advertisements they saw before they
22 purchased the RAV4, they do recall that safety and reliability were a consistent
23 theme across the advertisements they saw. Those representations about safety and
24 reliability influenced their decision to purchase the RAV4. Had those
25 advertisements or any other materials disclosed that Toyota vehicles could accelerate
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1 suddenly and dangerously out of the driver's control and lacked a fail-safe
2 mechanism to overcome this, they would not have purchased the RAV4.

3 71. Plaintiff Carole R. Young is a resident and citizen of Ohio. She owns a
4 2009 Toyota Corolla. On December 19, 2009, Ms. Young had a collision as a result
5 of SUA when she was approaching a red light. She applied the brakes, but the
6 vehicle only slowed to 15-20 mph and did not stop. Ms. Young had to swerve to
7 avoid a SUV in the intersection and was forced to run the red light. She took her foot
8 off the brake pedal after clearing the intersection, and the Corolla accelerated to 50
9 MPH. She applied pressure on the brake pedal again, and this time the vehicle
10 slowed down. Ms. Young was able to drive home and found that the floor mat was
11 not impeding the accelerator pedal in any way. Ms. Young discussed the incident
12 with her dealership and asked the dealer to get her another vehicle, but the dealer did
13 not help her. She tried to call the Toyota Customer Experience Center but was unable
14 to reach a representative. Ms. Young saw advertisements for Toyota vehicles on
15 television, in magazines, on billboards, in brochures at the dealership, and on the
16 Internet during the years before she purchased her 2009 Toyota Corolla LE on
17 November 4, 2008. Although she does not recall the specifics of the many Toyota
18 advertisements she saw before she purchased her Corolla, she does recall that safety
19 and reliability were a consistent theme across the advertisements she saw. Those
20 representations about safety and reliability influenced her decision to purchase her
21 Corolla. Had those advertisements any other materials disclosed that Toyota
22 vehicles could accelerate suddenly and dangerously out of the driver's control and
23 lacked a fail-safe mechanism to overcome this, she would not have purchased her
24 Corolla. She certainly would not have paid as much for it.
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1 72. Each of the Consumer Plaintiffs have purchased or leased a car with a
2 defect and in a transaction where Toyota did not disclose material facts related to a
3 vehicle's essential purpose – safe transportation. As a result, each Plaintiff did not
4 receive the benefit of their bargain and/or overpaid for their vehicles, made lease
5 payments that were too high and/or sold their vehicles at a loss when the public
6 gained partial awareness of the defect.
7

8 **B. Non-Consumer Plaintiffs**

9 73. Plaintiff Green Spot Motors Co. ("Green Spot Motors") is a California
10 corporation with its principal place of business in Salinas, California. Plaintiff Green
11 Spot Motors is an auto dealership. In mid-2009, Green Spot Motors purchased a
12 2007 Toyota Camry. Later that year, Green Spot Motors purchased a 2009 Toyota
13 Camry from Toyota. As a result of the wrongful and deceptive actions and business
14 practices of Toyota, Green Spot Motors purchased vehicles that were not of the
15 quality or reliability that was advertised. As a result, Green Spot Motors overpaid
16 for the vehicles and has been unable to re-sell them even at substantially reduced
17 prices. If Toyota had disclosed the nature and extent of the problems alleged herein,
18 Green Spot Motors would not have purchased a vehicle from Toyota, or would not
19 have purchased the vehicles for the prices paid. The value of Green Spot Motors'
20 two Camry vehicles has diminished as a result of the SUA defect. In addition, Green
21 Spot Motors has suffered lost profits and other economic losses due to its inability to
22 sell the Toyota vehicles.
23

24 74. Plaintiff Jerry Baker Auto Sales, LLC is a family-owned and operated
25 independent automotive sales business in Sedalia, Missouri. It has been in
26 continuous operation for almost 40 years, since 1972. Jerry Baker Auto Sales, LLC
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1 employs 10 people in its sales and service departments. Jerry Baker Auto Sales,
2 LLC obtains vehicles for sale from a variety of sources, such as trade-ins, auctions,
3 and direct purchases. Normally, it carries some Defective Vehicles (defined in
4 Paragraph 80, *infra*) for sale on its lot. At the time of Toyota's Stop Sales Order,
5 Jerry Baker Auto Sales, LLC owned a 2008 Toyota Highlander and a 2007 Toyota
6 Tacoma. Both of these vehicles were the subject of Toyota's Stop Sales Order and
7 had been purchased by Jerry Baker Auto Sales, LLC for the purpose of reselling
8 them at a profit to the general public. Because of Toyota's Stop Sales Order, Jerry
9 Baker Auto Sales, LLC was required to hold the vehicles and not place them for sale
10 to the general public. As a result, Jerry Baker Auto Sales, LLC overpaid for the
11 vehicles. The value of Jerry Baker Auto Sales, LLC's Highlander and Tacoma have
12 diminished as a result of the SUA defect. In addition, Jerry Baker Auto Sales, LLC
13 has suffered lost profits and other economic losses due to its inability to sell the
14 Toyota vehicles.
15

16
17 75. Plaintiff Auto Lenders Liquidation Center, Inc. ("Auto Lenders") was
18 established over twenty years ago and is a New Jersey S corporation with no
19 partnerships. Auto Lenders is a residual value insurer, guarantor and lease maturity
20 vehicle liquidator. In addition to its wholesale division, Auto Lenders also operates
21 five New Jersey retail automobile dealerships and service centers. Its retail
22 operations help maximize overall performance of the residual guarantee. In addition,
23 Auto Lenders supports both its retail and wholesale operations with a state-of-the-art,
24 40-thousand-square-foot reconditioning facility located on nineteen acres. Auto
25 Lenders is contracted directly to a third party, a regional new vehicle lessor, Hann
26 Financial Service Corporation ("Hann"). Hann is a wholly owned subsidiary of
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1 Susquehanna Bankshares, Inc. Acting as Hann's residual insurer and guarantor,
2 Auto Lenders is ultimately responsible, upon lease maturity, for a vehicle's residual
3 value. Hann's lease portfolio currently consists of over a billion dollars in
4 receivables and includes various Toyota and Lexus vehicles. Auto Lenders insured
5 the residual value for hundreds of Defective Vehicles and has suffered (and
6 continues to suffer) economic harm as a direct and legal result of the diminished
7 value of these vehicles.
8

9 76. As alleged above, Plaintiff Auto Lenders is a residual value insurer and
10 guarantor and a lease maturity vehicle liquidator. In other words, before a new
11 vehicle's initial lease begins, Auto Lenders sets a residual value for the vehicle,
12 using a proprietary and confidential process developed and refined over several years
13 and at a considerable cost. The residual value is used in calculating the financial
14 particulars of the vehicle lease. Auto Lenders then adds to the residual the predicted
15 cost of reconditioning and liquidating the vehicle and an appropriate profit margin.
16 Auto Lenders is ultimately responsible, at lease maturity, for reconditioning and
17 liquidating the off-lease vehicles and paying the residual to the leasing bank, which,
18 in the case of the Subject Vehicles, was Hann Financial Services Corporation ("Hann
19 Financial"), a subsidiary of Susquehanna Bankshares, Inc.
20
21

22 77. As a result of its contracts with Hann Financial, off-lease vehicles are
23 delivered to Auto Lenders for reconditioning and sale, and Auto Lenders becomes
24 the owner of each off-lease vehicle upon its contractually required payment of the
25 residual. Ownership then transfers from Auto Lenders to the vehicle purchaser.
26

27 78. For several years prior to September 2009, Auto Lenders insured and
28 guaranteed residuals on Toyota and Lexus vehicles. Those vehicles – for example,

1 the Toyota Camry and the Toyota Corolla – became staples of Auto Lenders’ fleet
2 because they predictably and consistently maintained resale value, they had a
3 seemingly well-deserved reputation for quality, dependability and reliability, and
4 they seemed to conform to Defendants’ claims that Toyota and Lexus vehicles were
5 safe. As set forth in detail above, that changed in mid-2009, when the propensity of
6 Toyota vehicles to suddenly and uncontrollably accelerate against the intentions of
7 the driver – a defect known to Toyota for years – became known publicly.

9 79. On September 1, 2009, Auto Lenders was insuring the residual values
10 of approximately 3,456 Toyota vehicles still on lease or off-lease and in inventory,
11 and approximately 2,231 Lexus vehicles still on lease or off-lease and in inventory.

13 80. Beginning in September 2009, the resale values for Toyota Vehicles
14 plummeted. In an effort to liquidate the flood of off-lease Toyota and Lexus
15 Vehicles, Auto Lenders made a business decision to lower prices on these vehicles.
16 The price reductions were, in large part, made systematically. At a certain price
17 point, the market reacted, and the vehicles began selling. Additionally, some of the
18 Toyota and Lexus vehicles were liquidated at auction.

20 81. Between September 30, 2009, and September 20, 2010, Auto Lenders
21 sold approximately 1,668 Toyota vehicles. The difference between the predicted
22 market value of those vehicles, and the actual sales revenue was \$5,465,325.90.

24 82. Between September 17, 2009, and September 20, 2010, Auto Lenders
25 sold approximately 895 Lexus vehicles. The difference between the predicted
26 market value of those vehicles, and the actual sales revenue was \$5,873,527.18.

28 83. In a further attempt to mitigate losses and sell the Toyota and Lexus
vehicles, Auto Lenders transported 538 vehicles to Prestige Toyota in Mahwah, New

1 Jersey for administration of recall-related repairs. Auto Lenders spent \$80 per
2 vehicle to have the vehicles transported to the dealer, for a total of \$43,040.00.

3 84. Plaintiff Deluxe Holdings Inc. (“Deluxe Holdings”), dba Deluxe Rent a
4 Car, a Nevada corporation, operates a rental car business and has its “nerve center”
5 and principal place of business at 5315 W. 102nd Street, Los Angeles, California
6 90045. As of the date of the filing of the consolidated master complaint, Plaintiff
7 owns about 258 of the Subject Vehicles (defined in Paragraph 80, *infra*)
8 manufactured and sold by the Defendants, and has previously owned about 105 of
9 the Subject Vehicles during the relevant time frame. The value of the Subject
10 Vehicles owned by Deluxe Holdings has diminished as a result of the SUA defect.
11 Deluxe Holdings has also suffered damages for the Subject Vehicles that it
12 previously owned and sold at a loss. In addition, Deluxe Holdings has suffered lost
13 profits and other economic losses. Deluxe Holdings, by and through its
14 employees/agents, has had direct dealing during the relevant time frame with the
15 Defendants regarding the purchase of Toyota vehicles, so that Deluxe Holdings is in
16 privity with those Defendants.
17

18 85. Green Spot Motors, Jerry Baker Auto Sales, Deluxe Holdings and Auto
19 Lenders are hereinafter referred to as the “Commercial Plaintiffs.”
20

21
22 **C. Consumer Plaintiffs in the Event California Law Does Not Apply**

23 86. Plaintiff Adam Aleszczyk is a resident of Illinois and the owner of a
24 2006 Toyota Tacoma. Mr. Aleszczyk is a police officer in Chicago, Illinois. He
25 experienced more than one SUA event in his Tacoma and also had a collision due to
26 SUA. While driving to work, his truck accelerated near an intersection; when the
27 brakes would not respond to stop the vehicle, Mr. Aleszczyk steered the vehicle into
28

1 two concrete barriers to avoid hitting other motorists. He has had the pedal and floor
2 mat recall repairs performed on the Tacoma. The floor mats were not near the pedal
3 during any of the SUA events. He saw advertisements for Toyota vehicles on
4 television during the time before he purchased his Tacoma in September 2005.
5 Although he does not recall the specifics of the many Toyota advertisements he saw
6 before he purchased his 2006 Toyota Tacoma, he does recall that safety and
7 reliability were consistent themes across the advertisements he saw. Those
8 representations about safety and reliability influenced his decision to purchase his
9 Tacoma. Had those advertisements or any other materials disclosed that Toyota
10 vehicles could accelerate suddenly and dangerously out of the driver's control and
11 lacked a fail-safe mechanism to overcome this, he would not have purchased his
12 2006 Toyota Tacoma. He certainly would not have paid as much for it.

15 87. Plaintiff Kathleen Allen is a resident of Indiana and owns a 2010 Toyota
16 Camry LE. She has experienced SUA in her vehicle. She saw advertisements
17 misrepresenting the safety of Toyota vehicles on television and in magazines during
18 the years prior to when she purchased her Toyota in August 2009. She also reviewed
19 the window sticker of her vehicle, warranty information, and news programs, which
20 she understood provided information supplied from Toyota press releases. Based on
21 these representations as to the safety of Toyota vehicles, Mrs. Allen purchased her
22 2010 Camry. Had these advertisements, window sticker, warranty information, news
23 programs, or any other materials disclosed that Toyota vehicles could accelerate
24 suddenly and dangerously out of the driver's control and lacked a fail-safe
25 mechanism to overcome this, Mrs. Allen would not have purchased her 2010 Camry
26 or would not have paid as much for it.

1 88. Plaintiff Jude Anheluk is a resident and citizen of Minnesota. He owns
2 a 2008 Toyota Camry. He saw advertisements for Toyota vehicles on television, in
3 magazines, on billboards, in brochures at the dealership, and on the Internet for at
4 least seven years before he purchased his Camry. Although he does not recall the
5 specifics of the many Toyota advertisements he saw before he purchased his Camry
6 in December 2007, he recalls that safety, reliability and quality were consistent
7 themes across the advertisements he saw. Those representations about safety,
8 reliability and quality influenced his decision to purchase his Camry. Had those
9 advertisements or any other materials disclosed that Toyota vehicles could accelerate
10 suddenly and dangerously out of the driver's control and lacked a fail-safe
11 mechanism to overcome this, he would not have purchased his Camry. He certainly
12 would not have paid as much for it.

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15 89. Plaintiffs Albert and Wanda Bosse are residents and citizens of
16 Kentucky. They owned a 2002 Toyota Camry and currently own a 2006 Avalon and
17 a 2009 Corolla. They sold their Camry below market value after they experienced
18 SUA in the Camry. For years prior to purchasing their Toyotas on July 16, 2002 and
19 August 26, 2008, the Bosses reviewed information about Toyota in brochures at the
20 dealership, on the window stickers, warranty information, and news reports based on
21 Toyota press releases. Based on these misrepresentations as to the safety and
22 reliability of Toyota vehicles, the Bosses purchased their 2002 Camry and 2009
23 Corolla. Had these brochures, window stickers, warranty information, news reports,
24 or any other materials disclosed that Toyota vehicles could accelerate suddenly and
25 dangerously out of the driver's control and lacked a fail-safe mechanism to
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1 overcome this, the Bosses would not have purchased their 2002 Camry and 2009
2 Corolla and would not have paid as much for them.

3 90. Plaintiffs Rich and Jan Bowling are residents of Maryland. They own a
4 2005 Toyota Avalon. While Mrs. Bowling was pulling into a parking spot with her
5 husband, the car suddenly accelerated. The car hit an iron railing and some steps,
6 causing five thousand dollars in damage to the car. The Bowlings had the car
7 inspected, but Toyota said the collision was caused by driver error. The Bowlings
8 saw advertisements for Toyota vehicles on television, in magazines, on billboards,
9 newspapers, and in brochures at the dealership for a few months before they
10 purchased their Avalon. Although they do not recall the specifics of the many
11 Toyota advertisements they saw before they purchased their Avalon, they do recall
12 that safety and reliability were consistent themes across the advertisements they saw.
13 The Bowlings specifically remember Toyota advertising that their cars were still on
14 the road after several years. These representations about safety and reliability
15 influenced their decision to purchase their Avalon. Had those advertisements or any
16 other materials disclosed that Toyota vehicles could accelerate suddenly and
17 dangerously out of the driver's control and lacked a fail-safe mechanism to
18 overcome this, they probably would not have purchased their Avalon. They
19 certainly would not have paid as much for it.

20 91. Plaintiff Vanessa Bozeman is a resident of West Virginia and owns a
21 2007 Toyota Camry XLE. Ms. Bozeman, an elementary school principal, has
22 experienced multiple SUA events. During the first event, with her parents in the car,
23 the brakes would not respond to stop the vehicle; Ms. Bozeman was able to shift the
24 vehicle in neutral and bring it to a stop to avoid hitting the motorist in front of her.

1 The second SUA incident took place on a busy highway in Barboursville, West
2 Virginia. Again, the vehicle began accelerating and did not respond when Ms.
3 Bozeman applied the brake. Ms. Bozeman shifted the vehicle into neutral and was
4 able to bring the vehicle to a stop. Ms. Bozeman has had both the accelerator pedal
5 and floor mat recall repairs implemented on her vehicle. She has also had the
6 vehicle inspected at a local Toyota dealership multiple times, with no resolution to
7 the problem. After the dealer performed the recall repairs, Ms. Bozeman
8 experienced another SUA event in the summer of 2010 when taking her parents to a
9 doctor – the vehicle again accelerated, did not respond to the brakes, and had to be
10 stopped by putting it in neutral. Ms. Bozeman cannot afford to trade the vehicle due
11 to the diminished value. She saw advertisements for Toyota vehicles on television
12 for years before purchasing her Camry on May 13, 2008. Although she does not
13 recall the specifics of the many Toyota advertisements she saw before she purchased
14 her Camry, she does recall that safety and reliability were consistent themes across
15 the advertisements she saw. Those representations about safety and reliability
16 influenced her decision to purchase her Camry. Had those advertisements or any
17 other materials disclosed that Toyota vehicles could accelerate suddenly and
18 dangerously out of the driver's control and lacked a fail-safe mechanism to
19 overcome this, she would not have purchased her 2007 Camry XLE. She certainly
20 would not have paid as much for it.

21
22 92. Plaintiff Deshawna Carter is a resident of West Virginia and owns a
23 2008 Toyota Camry LE. Ms. Carter has experienced a persistent SUA problem in
24 her Camry; the engine revs high and then pulls back on its own. It does not drive at
25 a steady speed. Ms. Carter has reported this problem frequently to the local Toyota
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1 dealership and has had the Camry inspected, but the dealer stated there were no error
2 codes. The issues persisted after Ms. Carter had the recall repairs implemented. She
3 saw advertisements for Toyota vehicles on television during the three years before
4 she purchased her Camry in October 2008. Although she does not recall the specifics
5 of the many Toyota advertisements she saw before she purchased her Camry, she
6 does recall that reliability was a consistent theme across the advertisements she saw.
7 Those representations about reliability influenced her decision to purchase her
8 Camry. Had those advertisements or any other materials disclosed that Toyota
9 vehicles could accelerate suddenly and dangerously out of the driver's control and
10 lacked a fail-safe mechanism to overcome this, she would not have purchased her
11 Camry. She certainly would not have paid as much for it.

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14 93. Plaintiff Mark Casto is a resident and citizen of Alabama. He owns a
15 2009 Toyota Corolla. He has taken the Corolla to several dealers to discuss trading
16 it in, but the dealers told him they didn't want it, and he realized he would take a
17 large loss if he traded it in due to the depreciation from the SUA defect. He spoke to
18 a service representative at his dealer to ask what he should do in the event of SUA,
19 and she said she did not "have a magic wand." He also complained to Toyota's
20 Customer Experience Center, but did not get any relief. Mr. Casto saw
21 advertisements for Toyota vehicles on television for years before he purchased his
22 Corolla. Although he does not recall the specifics of the many Toyota
23 advertisements he saw before he purchased his Corolla, he does recall that safety and
24 reliability were consistent themes across the advertisements he saw. He also
25 reviewed the window sticker of his car and warranty information.
26 Those representations about safety and reliability, as well as Toyota's reputation for
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1 holding value, influenced his decision to purchase his Corolla. Had those
2 advertisements or any other materials disclosed that Toyota vehicles could accelerate
3 suddenly and dangerously out of the driver's control and lacked a fail-safe
4 mechanism to overcome this, he would not have purchased his Corolla.
5

6 94. Plaintiff Joseph John Chant is a resident and citizen of Idaho. He owns
7 a 2010 Toyota Camry LE. Mr. Chant saw advertisements for Toyota vehicles on
8 television, in magazines, on billboards, in brochures at the dealership, and on the
9 Internet for at least ten years before he purchased his Camry. Although he does not
10 recall the specifics of the many Toyota advertisements he saw before he purchased
11 his Camry, he recalls that safety and reliability were consistent themes across the
12 advertisements he saw. Those representations about safety and reliability influenced
13 his decision to purchase his Camry. Had those advertisements or any other materials
14 disclosed that Toyota vehicles could accelerate suddenly and dangerously out of the
15 driver's control and lacked a fail-safe mechanism to overcome this, he would not
16 have purchased his Camry. He certainly would not have paid as much for it.
17

18 95. Plaintiff Demetra Christopher owns a 2006 Toyota Avalon XL and
19 resides in Kentucky. She experienced SUA in her vehicle as she turned the corner at
20 an intersection. After making the turn, the vehicle accelerated on its own, causing
21 her to hit a curb and then a fire hydrant. Ms. Christopher saw advertisements
22 misrepresenting the safety of Toyota vehicles on television, in magazines, and on
23 billboards for years prior purchasing her Avalon in December 2005. She also
24 reviewed the window sticker and warranty information and saw news reports based
25 on Toyota press releases. Based on these representations as to the safety of Toyota
26 vehicles, she purchased her Avalon. Had these advertisements, window sticker,
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1 warranty information, news reports, or any other materials disclosed that Toyota
2 vehicles could accelerate suddenly and dangerously out of the driver's control and
3 lacked a fail-safe mechanism to overcome this, Ms. Christopher would not have
4 purchased her Avalon and/or paid as much for it.
5

6 96. Plaintiff Maria Cisneros is a resident of Texas. She owned a 2009
7 Toyota Corolla. After purchasing her Corolla, Ms. Cisneros noticed that the engine
8 idled at more than 2000 rpms and that sometimes the idle rate would fluctuate up and
9 down while the car was in park. She also noticed that the engine sometimes "roared"
10 while she was driving it. She took the car to the dealer on multiple occasions, but the
11 problem was never fixed. On April 7, 2009, Ms. Cisneros was driving between 30-
12 35 mph when the vehicle jerked and accelerated to 50-55 mph. She applied the
13 brakes, regained control of the vehicle, and drove to the dealer. The dealer did not
14 find a problem. Ms. Cisneros had a similar experience later April 13, 2009, when the
15 car suddenly accelerated while she was driving 40-45 mph. She was able to regain
16 control after applying the brakes. On August 15, 2009, while exiting a parking lot,
17 the Corolla accelerated and shot out of the parking lot and into traffic. Ms. Cisneros
18 applied the brakes, but was not able to regain control of the Corolla before it collided
19 with a vehicle in oncoming traffic. The Corolla was totaled. Ms. Cisneros suffered
20 economic loss because she overpaid for the defective Corolla and because she would
21 not have purchased it had she known about the SUA defect. Ms. Cisneros saw and
22 heard advertisements for Toyota vehicles on television, in magazines, and on
23 billboards during the several years before she purchased her Toyota Corolla.
24 Although she does not recall the specifics of the many Toyota advertisements she
25 saw and heard before she purchased her Corolla, she does recall that safety and
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1 reliability were consistent themes across the advertisements. Those representations
2 about safety and reliability influenced her decision to purchase her Corolla. Had
3 those advertisements or any other materials disclosed that Toyota vehicles could
4 accelerate suddenly and dangerously out of the driver's control and lacked a fail-safe
5 mechanism to overcome this, she would not have purchased it.
6

7 97. Plaintiff Donna Cramer is a resident of Georgia and owns a 2005
8 Toyota 4Runner. Ms. Cramer experienced SUA while driving with her sister; her
9 vehicle accelerated out of control into a group of mangrove trees before coming to a
10 stop. Ms. Cramer had Toyota inspect the vehicle and filed a complaint with
11 NHTSA. She saw advertisements for Toyota vehicles on television and on the
12 Internet for approximately ten years before she purchased her 4Runner in February
13 2006. Although she does not recall the specifics of the many Toyota advertisements
14 she saw before she purchased her 4Runner, she does recall that safety and reliability
15 were a consistent theme across the advertisements she saw. Those representations
16 about safety and reliability influenced her decision to purchase her 4Runner. Had
17 those advertisements or any other materials disclosed that Toyota vehicles could
18 accelerate suddenly and dangerously out of the driver's control and lacked a fail-safe
19 mechanism to overcome this, she would not have purchased her 4Runner. She
20 certainly would not have paid as much for it.
21

22 98. Plaintiff Walter Crigler is a resident and citizen of Arizona. He owned a
23 2008 Toyota Prius. Due to his concerns regarding the Toyota SUA defect, Mr.
24 Crigler traded his Prius in for another vehicle. He incurred a significant loss on the
25 trade. He received less for his trade because of the defects now associated with
26 Toyota vehicles, yet purchased the vehicle because he believed it would have a high
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1 resale value. Mr. Crigler saw advertisements for Toyota vehicles on television, in
2 magazines, on billboards, in brochures at the dealership, and on the Internet for
3 several years before he purchased his Prius on December 31, 2007. Although he
4 does not recall the specifics of the many Toyota advertisements he saw before he
5 purchased his Prius, he does recall that safety and reliability were consistent themes
6 across the advertisements he saw. Those representations about safety and reliability
7 influenced his decision to purchase his Prius. Had those advertisements or any other
8 materials disclosed that Toyota vehicles could accelerate suddenly and dangerously
9 out of the driver's control and lacked a fail-safe mechanism to overcome this, he
10 would not have purchased his Prius. He certainly would not have paid as much for
11 it.
12

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14 99. Plaintiff Hal Farrington is a resident and citizen of Massachusetts. He
15 owns a 2009 Toyota Camry. Mr. Farrington has experienced two SUA incidents.
16 On January 21, 2010, he pulled his car into his neighbor's driveway. His car
17 suddenly accelerated, and he hit his neighbor's car. He took the car to the dealer; it
18 did not identify a problem. Two weeks later, he was moving his car closer to his
19 garage door to make room for his wife's car in the driveway, but it accelerated when
20 he took his foot off the brake. He pressed the brake again, but the car did not stop
21 and hit the garage door. The car was towed to the dealer for inspection and repair.
22 Mr. Farrington saw advertisements for Toyota vehicles on television and on the
23 Internet for several months before he purchased his Camry. Although he does not
24 recall the specifics of the many Toyota advertisements he saw before he purchased
25 his Camry on January 5, 2010, he does recall that safety and reliability were
26 consistent themes across the advertisements he saw. Those representations about
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1 safety and reliability influenced his decision to purchase his Camry. When he
2 purchased his Camry, he asked the salesman about the “sticky pedal” issue but was
3 told it was no big deal, and that a correction would be issued shortly. Had those
4 advertisements or any other materials disclosed that Toyota vehicles could accelerate
5 suddenly and dangerously out of the driver's control and lacked a fail-safe
6 mechanism to overcome this, he would not have purchased his Camry. He certainly
7 would not have paid as much for it.
8

9 100. Plaintiff Phillip Finkel is a resident and citizen of Illinois and owns a
10 2006 Lexus GS 300. He has experienced two SUA events in his Lexus. During both
11 events, the vehicle would not respond when he applied the brakes. In one, he
12 accelerated to pass a car when his Lexus accelerated and would not stop. Dr.
13 Finkel’s wife then had the same experience while Dr. Finkel was a passenger. Both
14 times, the Finkels had to shift the vehicle into neutral to bring the car to a stop. The
15 dealer informed Dr. Finkel the mats were the cause of the problem. Dr. Finkel has
16 since traded his Lexus vehicle at a loss. During the years before he purchased his
17 Lexus on January 1, 2006, Dr. Finkel saw advertisements for Lexus vehicles on
18 television, and these advertisements promoted safety and reliability as consistent
19 themes. Had these advertisements or any other materials disclosed that Lexus
20 vehicles could accelerate suddenly and dangerously out of the driver’s control and
21 lacked a fail-safe mechanism to overcome this, he would not have purchased his GS
22 300. He certainly would not have paid as much for it.
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25 101. Plaintiff Ann Fleming-Weaver is a resident and citizen of North
26 Carolina. Ms. Fleming-Weaver owns a 2005 Toyota Avalon and has experienced
27 several SUA incidents. During these incidents, the car suddenly accelerates, forcing
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1 Ms. Fleming-Weaver to put the car in neutral to slow down. On one occasion, her
2 car suddenly accelerated in a parking lot, and she was able to slow the car. Ms.
3 Fleming-Weaver then returned home, and when pulling into her driveway, the car
4 suddenly accelerated again, causing her to collide with her garage door. Toyota
5 inspected the car, and the inspector told her there were "serious problems with the
6 car." Nevertheless, Toyota later informed her the car was not defective and claimed
7 the SUA incidents had been caused by driver error. Ms. Fleming-Weaver saw
8 advertisements for Toyota vehicles on television, in magazines, on billboards, in
9 brochures at the dealership, and on the Internet for several years before she
10 purchased her Avalon. Although she does not recall the specifics of the many
11 Toyota advertisements she saw before she purchased her Avalon, she does recall that
12 safety and reliability were consistent themes across the advertisements she saw.
13 Those representations about safety and reliability influenced her decision to purchase
14 her Avalon. Had those advertisements or any other materials disclosed that Toyota
15 vehicles could accelerate suddenly and dangerously out of the driver's control and
16 lacked a fail-safe mechanism to overcome this, she would not have purchased her
17 Avalon. She certainly would not have paid as much for it.

21 102. Plaintiffs Charles and Karen Gibbens owned a 2009 Toyota Corolla LE
22 and reside in Aurora, Indiana. They experienced SUA in their Corolla and later
23 traded in the Corolla to the dealer. They took a loss on the trade-in due to the
24 depreciation in value of their Corolla from the defect. The Gibbens saw
25 advertisements misrepresenting the safety of Toyota vehicles on television for years
26 before purchasing their Toyotas on February 26, 2009 and November 19, 2009. The
27 Gibbens also reviewed the window sticker, warranty information, and news reports
28

1 based on information provided by Toyota in press releases. Based on
2 these misrepresentations as to the safety of Toyota vehicles, the Gibbens purchased
3 their 2009 Corolla and 2010 Corolla. Had these television advertisements, or the
4 window stickers, warranty information, news reports based on Toyota press releases
5 that they reviewed, or any other materials disclosed that Toyota vehicles could
6 accelerate suddenly and dangerously out of the driver's control and lacked a fail-safe
7 mechanism to overcome this, the Gibbens would not have purchased their Corollas
8 or would not have paid as much for them.
9

10 103. Plaintiff Douglas Guilbert is a resident and citizen of Rhode Island. He
11 owns a 2010 Toyota Camry. Mr. Guilbert saw advertisements misrepresenting the
12 safety of Toyota vehicles on television, the Internet, brochures, and from salespeople
13 for years before purchasing his Camry in November 2009. Based on
14 these misrepresentations as to the safety of Toyota vehicles, Mr. Guilbert purchased
15 his 2010 Camry. Mr. Guilbert also reviewed the window sticker, warranty
16 information, and news reports based on information provided by Toyota in press
17 releases. Had these advertisements, sticker, warranty, news reports, or any other
18 materials disclosed that Toyota vehicles could accelerate suddenly and dangerously
19 out of the driver's control and lacked a fail-safe mechanism to overcome this, Mr.
20 Guilbert would not have purchased his 2010 Camry or would not have paid as much
21 for it.
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24 104. Bruce Alan Harkey is a resident and citizen of North Carolina. He owns
25 a 2008 Toyota Tacoma. Mr. Harkey's son, Jeffrey, experienced SUA while driving
26 the Tacoma; it began accelerating down a hill towards a school bus that had stopped
27 to let children out. The truck did not respond to tapping or standing on the brakes
28

1 and increased in speed. To avoid hitting the children, Jeffrey steered to truck to a
2 grassy area and turned the vehicle off. Upon stopping the vehicle, Jeffrey and
3 Plaintiff Harkey discovered that the brake pedal was frozen approximately three-
4 fourths of the way down. Jeffrey and his father had two Toyota dealerships inspect
5 the vehicle, and both responded that nothing was wrong with the vehicle. The truck
6 has since been sold. Mr. Harkey saw advertisements for Toyota vehicles on
7 television, in magazines, on billboards, in brochures at the dealership, and on the
8 Internet for years before he purchased his Tacoma on September 5, 2008. Although
9 he does not recall the specifics of the many Toyota advertisements he saw before he
10 purchased his Tacoma, he does recall that safety and reliability were consistent
11 themes across the advertisements he saw. Those representations about safety and
12 reliability influenced his decision to purchase his Tacoma. Had those advertisements
13 or any other materials disclosed that Toyota vehicles could accelerate suddenly and
14 dangerously out of the driver's control and lacked a fail-safe mechanism to
15 overcome this, he would not have purchased his 2008 Tacoma. He certainly would
16 not have paid as much for it.

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20 105. Plaintiff Jeremy Henson is a resident and citizen of Oklahoma. He
21 owns a 2006 Toyota Tundra. Mr. Henson saw advertisements for Toyota vehicles on
22 television, in magazines, on billboards, in brochures at the dealership, and on the
23 Internet, for many years before he purchased his Tundra. Although he does not
24 recall the specifics of the many Toyota advertisements he saw before he purchased
25 his Tundra, he recalls that safety and reliability were consistent themes across the
26 advertisements he saw. The safety and reliability representations have been a part of
27 Toyota's advertising for as long as Mr. Henson has know of Toyota. Those
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1 representations about safety and reliability influenced his decision to purchase his
2 Tundra. Had those advertisements or any other materials disclosed that Toyota
3 vehicles could accelerate suddenly and dangerously out of the driver's control and
4 lacked a fail-safe mechanism to overcome this, he would not have purchased his
5 Tundra. He certainly would not have paid as much for it.

7 106. Plaintiff Barbara Jackson is a resident and citizen of New York. She
8 owns a 2008 Toyota Camry. She saw advertisements for Toyota vehicles on
9 television, in magazines, on billboards, in brochures at the dealership, and on the
10 Internet for years before she purchased her Camry. Although she does not recall the
11 specifics of the many Toyota advertisements she saw before she purchased her
12 Camry, she does recall that safety and reliability were consistent themes across the
13 advertisements she saw. Those representations about safety and reliability
14 influenced her decision to purchase her Camry. Had those advertisements or any
15 other materials disclosed that Toyota vehicles could accelerate suddenly and
16 dangerously out of the driver's control and lacked a fail-safe mechanism to
17 overcome this, she would not have purchased her Camry. She certainly would not
18 have paid as much for it.

20 107. Plaintiffs William and Darlene Kleinfeldt are residents and citizens of
21 Illinois. They own a 2010 Toyota Camry LE. The Kleinfeldts saw advertisements
22 misrepresenting the safety of Toyota vehicles on television and received information
23 from a Toyota dealer during the years prior to purchasing their Toyota on October
24 20, 2009. Based on these misrepresentations as to the safety of Toyota vehicles, the
25 Kleinfeldts purchased their 2010 Camry. They also reviewed the window sticker,
26 warranty information, and news reports based on press releases issued by Toyota.
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1 Had these advertisements, window sticker, warranty information, news reports, or
2 any other materials disclosed that Toyota vehicles could accelerate suddenly and
3 dangerously out of the driver's control and lacked a fail-safe mechanism to
4 overcome this, the Kleinfeldts would not have purchased their 2010 Camry or would
5 not have paid as much for it.
6

7 108. Plaintiffs Richard and Elise Kuhner are residents and citizens of
8 Washington. They own a 2006 Toyota Avalon. The Kuhnners had the pedal recall
9 performed prior to driving the Avalon to Arizona for vacation. While in Arizona,
10 they were in a large parking lot, traveling approximately eight to ten miles per hour.
11 Mr. Kuhner attempted to slow the car down further because pedestrians were ahead.
12 He pressed the brake hard, twice, but each time the car lurched and then resumed
13 acceleration. Mr. Kuhner then put the car in neutral, slammed on the brake, and the
14 car lurched, made a loud "thunk," and stopped. A dealership in Phoenix inspected
15 the car, but said there was no defect. Mr. Kuhner filed a complaint with Toyota.
16 The Kuhnners saw advertisements for Toyota vehicles on television, in magazines, in
17 brochures at the dealership, on the Internet for approximately two years before they
18 purchased their Toyota Avalon on July 18, 2006. Although they do not recall the
19 specifics of the many Toyota advertisements they saw before they purchased their
20 Avalon, they do recall that safety and reliability were consistent themes across the
21 advertisements they saw. Those representations about safety and reliability
22 influenced their decision to purchase their Avalon. Had those advertisements or any
23 other materials disclosed that Toyota vehicles could accelerate suddenly and
24 dangerously out of the driver's control and lacked a fail-safe mechanism to
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1 overcome this, they would not have purchased their Avalon. They certainly would
2 not have paid as much for it.

3 109. Plaintiff Christopher Lenney is a resident and citizen of Massachusetts.
4 Mr. Lenney is a state trooper and owns a 2010 Toyota Sequoia. Mr. Lenney was at
5 an intersection when the light changed, and traffic began to move forward. The car
6 in front of him stopped to avoid hitting a jaywalker. Mr. Lenney tried to stop the car,
7 applying the brake as hard as he could, but the engine kept revving and the car
8 accelerated. He rear-ended the car in front of him. Mr. Lenney saw advertisements
9 for Toyota vehicles on television, in magazines, on billboards, in brochures at the
10 dealership, and on the Internet for years before he purchased his Sequoia on
11 September 19, 2009. Although he does not recall the specifics of the many Toyota
12 advertisements he saw before he purchased his Sequoia, he recalls that safety and
13 reliability were consistent themes across the advertisements he saw. Those
14 representations about safety and reliability influenced his decision to purchase his
15 Sequoia. Had those advertisements or any other materials disclosed that Toyota
16 vehicles could accelerate suddenly and dangerously out of the driver's control and
17 lacked a fail-safe mechanism to overcome this, he would not have purchased his
18 Sequoia. He certainly would not have paid as much for it.

19 110. Plaintiff Monica Lowe is a resident and citizen of Maryland and owns a
20 2005 Toyota Prius. While driving her son to school, Ms. Lowe's vehicle suddenly
21 accelerated from 60 mph to over 80 mph. Ms. Lowe was able to shift the vehicle
22 into neutral and bring the vehicle to a stop. When she turned the vehicle back on, the
23 engine revved on its own. Toyota inspected the vehicle. Ms. Lowe currently has the
24 vehicle stored at her home, and she is afraid to drive it. She saw advertisements for

1 Toyota vehicles on television during the three years before she purchased her Prius
2 in August 2005. Although she does not recall the specifics of the many Toyota
3 advertisements she saw before she purchased her Prius, she does recall that safety
4 and reliability were a consistent theme across the advertisements she saw.

5 Those representations about safety and reliability influenced her decision to purchase
6 her Prius. Had those advertisements or any other materials disclosed that Toyota
7 vehicles could accelerate suddenly and dangerously out of the driver's control and
8 lacked a fail-safe mechanism to overcome this, she would not have purchased her
9 Prius. She certainly would not have paid as much for it.
10

11 111. Plaintiffs Dr. Aly A. Mahmoud and Lucinda K. Mahmoud are residents
12 and citizens of California. They owned a 2004 Corolla, which they purchased new.
13 The Mahmouds were pulling into a parking spot with Dr. Mahmoud's foot on the
14 brake. The car had almost come to a complete stop when suddenly the engine surged
15 and the car shot forward about six feet. It ran over the parking stop and came to a
16 rest up against a chain link fence. Dr. Mahmoud turned off the vehicle. Mrs.
17 Mahmoud then got into the driver's seat to back the car away from the fence. When
18 she started the car, it initially ran at idle, then without any input from her, the engine
19 again surged to a high RPM. The car was then towed to the Toyota dealership. Mr.
20 Craig Smith, from the Toyota Collision Center, called Dr. Mahmoud informed him
21 that when he had attempted to move the car at the dealership, the engine had once
22 again surged out of control, and that he had determined that the throttle was stuck in
23 the open position. He told them he had emailed Toyota "Corporate" to advise them
24 of the situation. Dr. and Mrs. Mahmoud later received a letter from Toyota stating
25 that there was nothing wrong with the vehicle other than the crash damage. Dr.
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1 Mahmoud attempted to sell the car to the Toyota dealership, but was offered only
2 \$7,000.00 due to its depreciated value. Dr. Mahmoud was later able to sell the car to
3 a private party, but still lost money on the sale. The Mahmonds understood that
4 Toyota had a reputation for safety. If they had known or if Toyota had disclosed that
5 Toyota vehicles could accelerate suddenly and dangerously out of the driver's
6 control and lacked a fail-safe mechanism to overcome this, they would not have
7 purchased their Corolla.
8

9 112. Plaintiff Priscilla Manarino-Leggett is a resident and citizen of North
10 Carolina. She owns a 2010 Toyota Avalon. Ms. Manarino-Leggett saw
11 advertisements misrepresenting the safety of Toyota vehicles in *Consumer Reports*,
12 on television, and on the Internet for years before she purchased her Avalon on
13 January 5, 2010. Based on these misrepresentations as to the safety of Toyota
14 vehicles, Mrs. Manarino-Leggett purchased her Avalon. She also reviewed the
15 window sticker, warranty information, and news reports based on press releases
16 issued by Toyota. Had these advertisements, window sticker, warranty information,
17 news reports, or any other materials disclosed that Toyota vehicles could accelerate
18 suddenly and dangerously out of the driver's control and lacked a fail-safe
19 mechanism to overcome this, Mrs. Manarino-Leggett would not have purchased her
20 2010 Toyota Avalon and/or paid as much for it.
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23 113. Plaintiff Patrick Mann is a resident and citizen of Missouri. He owns a
24 2009 Toyota Prius. Mr. Mann saw advertisements for Toyota vehicles on television,
25 in magazines, on billboards, in brochures at the dealership, and on the Internet during
26 the years before he purchased his Prius on May 22, 2009. Although he does not
27 recall the specifics of the many Toyota advertisements he saw before he purchased
28

1 his Prius, he does recall that safety and reliability were consistent themes across the
2 advertisements he saw. Those representations about safety and reliability influenced
3 his decision to purchase his Prius. Had those advertisements or any other materials
4 disclosed that Toyota vehicles could accelerate suddenly and dangerously out of the
5 driver's control and lacked a fail-safe mechanism to overcome this, he would not
6 have purchased his Prius. He certainly would not have paid as much for it.
7

8 114. Plaintiff Steven McDaniel, Jr. is a resident and citizen of Mississippi.
9 He owns a 2006 Lexus IS 250 and a 2007 Toyota Camry. Mr. McDaniel was on the
10 freeway on-ramp when his Lexus suddenly accelerated. He lost control of the
11 vehicle and went over the side of the ramp. He reported the incident to his dealer
12 and to Toyota Motor Services; his dealer claimed it had never heard of the SUA
13 problem. Mr. McDaniel saw advertisements for Toyota and Lexus vehicles on
14 television, in magazines, on billboards, in brochures at the dealership, and on the
15 Internet for years before he purchased his IS 250 and Camry. Although he does not
16 recall the specifics of the many Lexus and Toyota advertisements he saw before he
17 purchased his IS 250 and Camry, he recalls that safety and reliability were consistent
18 themes across the advertisements he saw. Those representations about safety and
19 reliability influenced his decision to purchase his IS 250 and Camry. Had those
20 advertisements or any other materials disclosed that Lexus and Toyota vehicles could
21 accelerate suddenly and dangerously out of the driver's control and lacked a fail-safe
22 mechanism to overcome this, he would not have purchased his IS 250 or his Camry.
23 He certainly would not have paid as much for them.
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27 115. Plaintiff Nancy Montemerlo is a resident and citizen of New
28 Hampshire. She owns a 2009 Toyota RAV4, which she purchased on January 26,

1 2009. After the news broke about the SUA defect, she asked her dealer to take the
2 car back or reduce her payment, or to reduce her interest rate, but the dealer refused.
3 She has experienced SUA while driving her RAV4. While accelerating from a stop,
4 the car will surge forward and accelerate on its own; these incidents happen
5 approximately every two weeks. Ms. Montemerlo saw advertisements for Toyota
6 vehicles on television, in magazines, in brochures at the dealership, and on the
7 Internet during the two years prior to purchasing her RAV4 on January 26, 2009.
8 Although she does not recall the specifics of the many Toyota advertisements she
9 saw before she purchased her RAV4, she recalls that safety and reliability were
10 consistent themes across the advertisements she saw. Those representations about
11 safety and reliability influenced her decision to purchase her RAV4. Had those
12 advertisements or any other materials disclosed that Toyota vehicles could accelerate
13 suddenly and dangerously out of the driver's control and lacked a fail-safe
14 mechanism to overcome this, she would not have purchased her RAV4. She
15 certainly would not have paid as much for it.

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18 116. Plaintiff John Moscicki is a resident and citizen of California. He owns
19 a 2007 Toyota Camry LE, which he purchased as a certified used vehicle from a
20 Toyota dealer in Oregon. Mr. Moscicki has experienced five sudden unintended
21 acceleration incidents while living in Oregon. During these incidents, the "gas pedal
22 went to the floor." Mr. Moscicki saw advertisements for Toyota vehicles on
23 television, in magazines, on billboards, in brochures at the dealership, and on the
24 Internet for many years before he purchased his Toyota Camry in November 2007.
25 Although he does not recall the specifics of the many advertisements he saw before
26 he purchased his Camry, he recalls that safety and reliability were consistent themes
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1 across the advertisements he saw. Those representations about safety and reliability
2 influenced his decision to purchase his Camry. Had those advertisements or any
3 other materials disclosed that Toyota vehicles could accelerate suddenly and
4 dangerously out of the driver's control and lacked a fail-safe mechanism to overcome
5 this, he would not have purchased his Camry. He certainly would not have paid as
6 much for it.
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8 117. Plaintiff Katherine Musgrave is a resident and citizen of Maine. She
9 owns a 2006 Toyota Prius. Ms. Musgrave first experienced SUA in a parking lot,
10 but did not have a collision. She then had a second experience when was traveling
11 down a city street when she began slowing to stop at a stop sign. She had slowed
12 from approximately 35 mph to approximately 25 mph when the car accelerated. She
13 was forced to go through the intersection, weave around three different cars, and then
14 go up on the curb. She collided with a utility pole. She tried to brake, but could not
15 stop or slow the car. She spoke to her dealer, who referred her to Toyota's Customer
16 Experience Center, because the dealer said Toyota had told him not to get involved
17 with SUA incidents because Toyota was afraid the dealer would take the side of its
18 customer. After she contacted the Customer Experience Center, a case manager
19 called her back and said she would be the case manager, but despite several phone
20 calls, Ms. Musgrave was never able to reach that person again. Toyota inspected the
21 car, and then sent her a letter saying the car was not defective. Ms. Musgrave asked
22 to see the report, but the inspector said the report was the property of Toyota. Ms.
23 Musgrave saw advertisements for Toyota vehicles on television and in magazines for
24 years before she purchased her Prius. Although she does not recall the specifics of
25 the many Toyota advertisements she saw before she purchased her Prius, she does
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1 recall that safety and reliability were consistent themes across the advertisements she
2 saw. Those representations about safety and reliability influenced her decision to
3 purchase her Prius. Had those advertisements or any other materials disclosed that
4 Toyota vehicles could accelerate suddenly and dangerously out of the driver's
5 control and lacked a fail-safe mechanism to overcome this, she would not have
6 purchased her Prius. She certainly would not have paid as much for it.
7

8 118. Plaintiff Lawrence Nelson is a resident and citizen of Montana. He
9 owns a 2009 Toyota Camry LE. When all of the recalls began, Mr. Nelson took his
10 car back to the dealership and was willing to do a trade-in for a non-Toyota vehicle,
11 but the dealership would not discuss it with him. He saw advertisements for Toyota
12 vehicles on television, in magazines, on billboards, in brochures at the dealership,
13 and on the Internet for six months before he purchased his Camry. Although he does
14 not recall the specifics of the many Toyota advertisements he saw before he
15 purchased his Camry, he recalls that safety and reliability were consistent themes
16 across the advertisements he saw. Those representations about safety and reliability
17 influenced his decision to purchase his Camry. Had those advertisements or any
18 other materials disclosed that Toyota vehicles could accelerate suddenly and
19 dangerously out of the driver's control and lacked a fail-safe mechanism to
20 overcome this, he would not have purchased his Camry. He certainly would not
21 have paid as much for it.
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24 119. Plaintiff Alyson L. Oliver is a resident and citizen of Michigan. She
25 owns a 2007 Toyota Prius. Ms. Oliver saw advertisements for Toyota vehicles on
26 the television and internet, including on Toyota's website, during the approximately
27 two to four months during which she researched various vehicles before she
28

1 purchased her Prius in 2007. Although she does not recall the specifics of many of
2 the Toyota advertisements she saw before she purchased her 2007 Toyota Prius, she
3 does recall that Toyota promoted its vehicles as safe and reliable. Those
4 representations about safety and reliability influenced her decision to purchase her
5 Prius. Had those advertisements or any other materials disclosed that Toyota
6 vehicles could accelerate suddenly and dangerously out of the driver's control and
7 lacked a fail-safe mechanism to overcome this, she would not have purchased her
8 Prius. She certainly would not have paid as much for it.

10 120. Plaintiff Karen Pedigo is a resident and citizen of Illinois. She owned a
11 2005 Toyota Camry. While taking her daughter to church, Ms. Pedigo was looking
12 for street parking. She had her foot off the gas and was pulling into a parallel space
13 when the car suddenly accelerated. The sudden acceleration caused her car to hit a
14 minivan. The car then recoiled and hit the minivan a second time. Ms. Pedigo called
15 Toyota's Customer Experience Center, but they stated there was nothing they could
16 do to help her. Due to the SUA, Ms. Pedigo sold her Camry and took a loss on the
17 vehicle. Ms. Pedigo saw advertisements for Toyota vehicles on television and in
18 magazines for several years before she obtained her Toyota Camry in 2005.

21 Although she does not recall the specifics of the many Toyota advertisements she
22 saw before she purchased her Camry, she does recall that safety and reliability were
23 consistent themes across the advertisements she saw. Those representations about
24 safety and reliability influenced her decision to purchase her Camry. Had those
25 advertisements or any other materials disclosed that Toyota vehicles could accelerate
26 suddenly and dangerously out of the driver's control and lacked a fail-safe
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1 mechanism to overcome this, she would not have selected a Camry. She certainly
2 would not have paid as much for it.

3 121. Plaintiff Roland Pippin is a resident and citizen of Louisiana. He owns
4 a 2009 Toyota Camry. Dr. Pippin purchased his Camry on October 17, 2009, only
5 days before the first of several recalls affecting his vehicle. This was the fourth
6 Toyota vehicle, and the third Camry, that Dr. Pippin had purchased since 1994.
7 Before each purchase, Dr. Pippin performed exhaustive research on the attributes of
8 various vehicles. During an approximate three-month period in which he
9 investigated and researched vehicles before purchase of his 2009 Camry, Dr. Pippin
10 saw advertisements for Toyota vehicles in brochures at Toyota dealerships and on
11 the Internet, including Toyota's website. Safety and reliability were consistent
12 themes across these advertisements. Toyota's representations of safety and
13 reliability influenced his decision to purchase the Camry. Had those advertisements
14 or any other materials disclosed that the Camry could accelerate suddenly and
15 dangerously out of control and lacked a failsafe mechanism to overcome this, Dr.
16 Pippin would not have purchased the vehicle. Safety and reliability, along with fuel
17 efficiency, are the most important factors in any vehicle Dr. Pippin purchases. Upon
18 notification that his vehicle was subject to recall, Dr. Pippin communicated a number
19 of times with the dealer from whom he bought the vehicle, as well as Toyota. No
20 satisfaction was given to any of Dr. Pippin's concerns. Dr. Pippin was so concerned
21 about the safety of his Camry after the recall that he parked his vehicle and did not
22 drive it for eight months.

23 122. Plaintiff George D. Radmall is a resident and citizen of Kansas. He
24 owns a 2007 Toyota Camry. On June 6, 2009, Mr. Radmall was parked in a parking
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1 lot. He started the car, and with his foot on the brake, shifted into reverse. The car
2 suddenly accelerated in reverse, and Mr. Radmall was unable to stop the car by
3 applying the brake. The car slammed into another car in the parking lot. On May 1,
4 2010, Mr. Radmall was pulling into a parking spot with his foot on the brake. When
5 he applied pressure to the brake to stop the car, the car accelerated. Mr. Radmall
6 pushed on the brake with both feet, but hit a storm drain cover (a large block of
7 concrete). On May 24, 2010, Mr. Radmall was turning into a parking spot, but had
8 to stop and put the car in reverse in order to align the car properly with the spot.
9 After he put the car in reverse, the engine revved loudly as though the throttle was
10 wide open, but the brakes stopped the car. Mr. Radmall released the brake after
11 shifting into drive, and the car lunged forward and hit a car and a cement block. He
12 sold the Camry in July 2010, and received less for the sale than he otherwise would
13 have but for the defect. Mr. Radmall saw advertisements for Toyota vehicles on
14 television, in magazines, on billboards, in brochures at the dealership, and on the
15 Internet during the years before he purchased his Toyota Camry on September 18,
16 2007. Although he does not recall the specifics of the many Toyota advertisements
17 he saw before he purchased his Camry, he does recall that safety and reliability were
18 consistent themes across the advertisements he saw. Those representations about
19 safety and reliability influenced his decision to purchase his Camry. Had those
20 advertisements or any other materials disclosed that Toyota vehicles could accelerate
21 suddenly and dangerously out of the driver's control and lacked a fail-safe
22 mechanism to overcome this, he would not have purchased his Camry. He certainly
23 would not have paid as much for it.
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1 123. Plaintiff John Jeremy Robson is a resident and citizen of Alaska. He
2 owned a 2007 Toyota Tundra. He purchased the vehicle in 2009 and sold it in May
3 2010. Mr. Robson received less for the sale of his Tundra than he would have
4 received if the vehicle did not have a SUA defect. He saw advertisements for Toyota
5 vehicles on television, in magazines, on billboards, in brochures at the dealership,
6 and on the Internet for several years before he purchased his Toyota Tundra in 2009.
7 Although he does not recall the specifics of the many Toyota advertisements he saw
8 before he purchased his Tundra, he does recall that safety and reliability were
9 consistent themes across the advertisements he saw. Those representations about
10 safety and reliability influenced his decision to purchase his Tundra. Had those
11 advertisements or any other materials disclosed that Toyota vehicles could accelerate
12 suddenly and dangerously out of the driver's control and lacked a fail-safe
13 mechanism to overcome this, he would not have purchased his Tundra.
14

15
16 124. Plaintiff Randee Romaner is a resident and citizen of New Jersey. She
17 leased and then purchased a 2007 Toyota Camry. Ms. Romaner lives in a rural part
18 of New Jersey where there is no public transportation, so she relies heavily on her
19 Camry. She saw advertisements for Toyota vehicles on television, in magazines, on
20 billboards, in brochures at the dealership, and on the Internet, for several months
21 before she leased and then purchased her Camry. Although she does not recall the
22 specifics of the many Toyota advertisements she saw before she purchased her
23 Camry, she recalls that safety and reliability were consistent themes across the
24 advertisements she saw. Those representations about safety and reliability
25 influenced her decision to purchase her Camry. Had those advertisements or any
26 other materials disclosed that Toyota vehicles could accelerate suddenly and
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1 dangerously out of the driver's control and lacked a fail-safe mechanism to
2 overcome this, she would not have leased her Camry. She certainly would not have
3 paid as much for it.

4 125. Plaintiff Keith Sealing is a resident and citizen of Pennsylvania. He
5 leases a 2009 Toyota Corolla and is a dean of Widener Law School. Dean Sealing
6 explored ending his lease early, but the market value had dropped so much due to the
7 defect that it was worth less than the remaining lease buy-out. He would have had to
8 pay out cash or else go into negative equity on a trade, so he was forced to keep it.
9 Dean Sealing saw advertisements for Toyota vehicles on television, in magazines, on
10 billboards, in brochures at the dealership, and on the Internet for at least ten years
11 before he leased his Corolla on May 28, 2008. Although he does not recall the
12 specifics of the many Toyota advertisements he saw before he purchased his Corolla,
13 he recalls that safety and reliability were consistent themes across the advertisements
14 he saw. Those representations about safety and reliability influenced his decision to
15 purchase his Corolla. Had those advertisements or any other materials disclosed that
16 Toyota vehicles could accelerate suddenly and dangerously out of the driver's
17 control and lacked a fail-safe mechanism to overcome this, he would not have leased
18 his Corolla. He certainly would not have paid as much for it.

19 126. Plaintiff Nancy Seamons is a resident and citizen of Utah. She owns
20 a 2009 Toyota RAV4. She spoke to her dealer about her concerns, but was brushed
21 off. She saw advertisements for Toyota vehicles on television, in magazines, on
22 billboards, in brochures at the dealership, and on the Internet for at least ten years
23 before she purchased her RAV4. Although she does not recall the specifics of the
24 many Toyota advertisements she saw before she purchased her RAV4, she recalls

1 that safety and reliability were consistent themes across the advertisements she saw.
2 Those representations about safety and reliability influenced her decision to purchase
3 her RAV4 at the end of 2009. Had those advertisements or any other materials
4 disclosed that Toyota vehicles could accelerate suddenly and dangerously out of the
5 driver's control and lacked a fail-safe mechanism to overcome this, she would not
6 have purchased her RAV4. She certainly would not have paid as much for it.
7

8 127. Plaintiff Richard Swalm is a resident and citizen of South Carolina. Mr.
9 Swalm leases a 2007 Toyota Camry LE. Mr. Swalm and his wife have experienced
10 multiple instances of the vehicle hesitating, then lunging forward. These problems
11 began after the first week of his lease. He has taken the vehicle several times to his
12 local dealership, which informed Mr. Swalm the problem was "just a glitch" in the
13 computer, but the problem still occurs. Mr. Swalm pursued arbitration in late
14 February/early March of 2010 to terminate his lease on the vehicle, but the arbitrator
15 ruled against Mr. Swalm. He saw advertisements for Toyota vehicles on television
16 approximately one to two years before he leased his Camry on March 3, 2007.
17 Although he does not recall the specifics of the many Toyota advertisements he saw
18 before he leased his 2007 Toyota Camry LE, he does recall that safety and reliability
19 were consistent themes across the advertisements he saw. Those representations
20 about safety and reliability influenced his decision to purchase his Camry. Had those
21 advertisements or any other materials disclosed that Toyota vehicles could accelerate
22 suddenly and dangerously out of the driver's control and lacked a fail-safe
23 mechanism to overcome this, he would not have leased his 2007 Toyota Camry LE.
24 He certainly would not have paid as much for it.
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1 128. Plaintiff Linda Tang is a resident and citizen of California. She owned a
2 2007 Camry. On March 1, 2010, nine days after Toyota performed the pedal recall
3 repair on Ms. Tang's vehicle, she had an SUA incident. Ms. Tang was making a left
4 turn when her vehicle began accelerating on its own. Her vehicle continued to
5 accelerate as she turned; she felt she had no control over her vehicle. She stepped on
6 the brake and was able to turn the engine off in the middle of the street. She waited a
7 few minutes, restarted the vehicle, and the RPMs immediately increased again. She
8 again turned the engine off. Ms. Tang never drove the vehicle again after her SUA.
9 In June 2010, she traded the vehicle in for a non-Toyota vehicle at a substantial loss.
10 She saw advertisements for Toyota vehicles on television, in magazines, on
11 billboards, in brochures at the dealership, and on the Internet during the many years
12 before she purchased her Toyota Camry on February 3, 2007. Although she does not
13 recall the specifics of the many Toyota advertisements she saw before she purchased
14 her Camry, she does recall that safety and reliability were consistent themes across
15 the advertisements she saw. Those representations about safety and reliability
16 influenced her decision to purchase her Camry. Had those advertisements or any
17 other materials disclosed that Toyota vehicles could accelerate suddenly and
18 dangerously out of the driver's control and lacked a fail-safe mechanism to
19 overcome this, she would not have purchased her Camry. She certainly would not
20 have paid as much for it.

21
22 129. Plaintiff Jane Taylor is a resident and citizen of Hawaii. She owns a
23 2005 Toyota Prius. Ms. Taylor saw advertisements for Toyota vehicles on
24 television, in magazines, on billboards for several years before she purchased the
25 Prius. This advertising, along with Toyota's reputation for quality, influenced her
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1 decision to buy the Prius, and she trusted that Toyota would make a safe and reliable
2 car. Had those advertisements or any other materials disclosed that Toyota vehicles
3 could accelerate suddenly and dangerously out of the driver's control and lacked a
4 fail-safe mechanism to overcome this, she would not have purchased the Prius. She
5 certainly would not have paid as much for it.
6

7 130. Plaintiff Kenny Teaster is a resident and citizen of Arkansas. He owned
8 a 2008 Toyota Tundra. Due to his concerns about its safety, especially because Mr.
9 Teaster has a young son, Mr. Teaster decided to trade in the Tundra for a 2010
10 Tundra. He took a loss on the vehicle due to the depreciation in value. He saw
11 advertisements for Toyota vehicles on television, in magazines, on billboards, in
12 brochures at the dealership, and on the Internet, for several years before he purchased
13 his 2008 Tundra. Although he does not recall the specifics of the many Toyota
14 advertisements he saw before he purchased his 2008 Tundra, he recalls that safety
15 and reliability were consistent themes across the advertisements he saw. Those
16 representations about safety and reliability influenced his decision to purchase his
17 2008 Tundra. Had those advertisements or any other materials disclosed that Toyota
18 vehicles could accelerate suddenly and dangerously out of the driver's control and
19 lacked a fail-safe mechanism to overcome this, he would not have leased his Tundra.
20 He certainly would not have paid as much for it.
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23 131. Plaintiff Shirley Ward is a resident of Virginia. She owned a 2005
24 Lexus ES 330. On April 2, 2010, Ms. Ward experienced a collision as a result of
25 SUA when her car accelerated while she was attempting to park at her condominium
26 complex. The vehicle suddenly took off, going over the curb and into a cinder-block
27 wall. After impact, the tires continued to spin and the engine continued to rev even
28

1 though Ms. Ward had both feet on the brake. When she put the vehicle into reverse,
2 the engine went back to normal. Ms. Ward traded in her ES 330 and received
3 substantially less value than she would have received if the vehicle did not have the
4 SUA defect. Ms. Ward saw advertisements for Lexus vehicles on television, in
5 magazines, in newspapers, and on billboards before she purchased her first Lexus in
6 1999 or 2000. She continued to see Lexus advertisements up until the time she
7 purchased her ES 330 in January 2010. Although she does not recall the specifics of
8 the many Lexus advertisements she saw before she purchased her ES 330, she does
9 recall that safety and reliability were consistent themes across the advertisements she
10 saw. Those representations about safety and reliability influenced her decision to
11 purchase her ES 330. Had those advertisements or any other materials disclosed that
12 Lexus vehicles could accelerate suddenly and dangerously out of the driver's control
13 and lacked a fail-safe mechanism to overcome this, she would not have purchased
14 her ES 330.

17 132. Plaintiff Ted M. Wedul is a resident and citizen of Wisconsin. He owns
18 a 2010 Toyota Prius. Mr. Wedul saw advertisements for Toyota vehicles on
19 television, on the Internet, and in magazines during the months before he purchased
20 his Prius in August 2009. Although he does not recall the specifics of many of the
21 Toyota advertisements he saw before he purchased his Prius, he does recall that
22 safety and reliability were consistent themes across the advertisements he saw. Mr.
23 Wedul recalls Toyota advertising suggesting that its vehicles had the highest ratings
24 in crash tests and were among the safest vehicles on the road today. Mr. Wedul
25 researched the safety of various vehicles extensively before he made his decision to
26 purchase a Toyota Prius. Toyota's representations about safety and reliability
27
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1 influenced his decision to purchase his Prius. Had Toyota's advertisements or any
2 other materials disclosed that Toyota vehicles could accelerate suddenly and
3 dangerously out of the driver's control and lacked a fail-safe mechanism to
4 overcome this, he would not have purchased his Prius.

5
6 133. Plaintiff Georgeann Whelan is a resident and citizen of Maryland. She
7 owned a 2005 Toyota Avalon. She experienced SUA several times at intersections,
8 when her car seemed to hesitate after stopping and then accelerate. While driving
9 with her adult daughter in a parking lot, driving less than 5 mph, Ms. Whelan heard
10 the engine roar and the car rapidly accelerated for approximately two parking lot
11 spaces into a Chevrolet Suburban. She checked the floor mat after the incident, and
12 it was in place. Ms. Whelan requested Toyota buy her vehicle back and wrote a letter
13 to Toyota Motor Sales. Ms. Whelan is generally aware that Toyota has a reputation
14 for reliability and safety from reading publications such as *Consumer Reports*. She
15 also reviewed the advertising booklet from the dealer before purchasing her Avalon,
16 which made representations about safety and reliability, including, "The Avalon not
17 only takes care of all your indulgences, but your safety as well....So you can truly
18 enjoy your ride from the standpoint of luxury and safety.... A standard of luxury
19 exceeded only by a standard of safety." She reviewed the window sticker of her
20 vehicle prior to her purchase, and reviews news reports regularly. Had these
21 advertisements or any other materials disclosed that Toyota vehicles could accelerate
22 suddenly and dangerously out of the driver's control and lacked a fail-safe
23 mechanism to overcome this, she would not have purchased her Toyota Avalon.
24
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27 134. Plaintiff Richard Wolf is a resident and citizen of Nevada. He and his
28 son own a 2006 Toyota Tacoma (Mr. Wolf is the co-signer on the loan), and he owns

1 a 2006 RAV4. Both vehicles have experienced SUA events. Mr. Wolf's son and his
2 daughter-in-law have been involved in collisions caused by SUA while driving the
3 Tacoma. Mr. Wolf's wife has experienced throttle issues and acceleration while
4 driving the RAV4. Mr. Wolf has retained both vehicles, and has had them inspected
5 by Toyota. He saw advertisements for Toyota vehicles on television, in magazines,
6 on billboards, in brochures at the dealership, and on the Internet, for years before he
7 purchased his 2006 Toyota Tacoma. Although he does not recall the specifics of the
8 many Toyota advertisements he saw before he purchased his Tacoma, he does recall
9 that safety and reliability were consistent themes across the advertisements he saw.
10 Those representations about safety and reliability influenced his decision to purchase
11 his Tacoma. Had those advertisements or any other materials disclosed that Toyota
12 vehicles could accelerate suddenly and dangerously out of the driver's control and
13 lacked a fail-safe mechanism to overcome this, he would not have purchased his
14 Tacoma. He certainly would not have paid as much for it.

17 **D. Defendants**

18 135. Defendant Toyota Motor Corporation ("TMC") is a Japanese
19 corporation. TMC is the parent corporation of Toyota Motor Sales, U.S.A., Inc.
20 TMC, through its various entities, designs, manufactures, markets, distributes and
21 sells Toyota, Lexus and Scion automobiles in California and multiple other locations
22 in the United States and worldwide.

24 136. Defendant Toyota Motor Sales, U.S.A., Inc. ("TMS") is incorporated
25 and headquartered in California. TMS is Toyota's U.S. sales and marketing arm,
26 which oversees sales and other operations in 49 states. TMS distributes Toyota,
27 Lexus and Scion vehicles and sells these vehicles through its network of dealers.
28

1 Money received from the purchase of a Toyota vehicle from a dealer flows from the
2 dealer to TMS. Money received by the dealer from a purchaser can be traced to
3 TMS and TMC.

4 137. TMS and TMC sell Toyota vehicles through a network of dealers who
5 are the agents of TMS and TMC.

6 138. TMS and TMC are collectively referred to in this complaint as “Toyota”
7 or the “Toyota Defendants” unless identified as TMS or TMC.

8 139. As used in this complaint, “Toyota vehicles”, “Defective Vehicles” or
9 “Subject Vehicles” refers to the following models that have ETCS:
10

11 **Toyota Vehicles**

12	2001 – 2010	4Runner
13		
14	2005 – 2010	Avalon
15		
16	2002 – 2010	Camry
17		
18	2007 – 2010	Camry HV
19		
20	2003 – 2005	Celica (2ZZ-GE Engine)
21		
22	2005 – 2010	Corolla (1ZZ-FE, 2AZ-FE, 2ZR-FE)
23		
24	2007 – 2010	FJ Cruiser
25		
26	2004 – 2010	Highlander
27		
28	2006 – 2010	Highlander HV
	1998 – 2010	Land Cruiser
	2005 – 2010	Matrix (2AZ-FE, 2ZR-FE, 1ZZ-FE (Not 4WD))
	2001 – 2010	Prius
	2004 – 2010	Rav4
	2001 – 2010	Sequoia

1	2004 – 2010	Sienna
2	2002 – 2008	Solara
3	2003 – 2004	Tacoma (5VZ-FE except Sport Model)
4	2005 – 2010	Tacoma
5		
6	2000 – 2010	Tundra (not including the 2000-2002 with 5VZ-FE)
7	2009 – 2010	Venza
8	2004 – 2010	Yaris
9	<u>Lexus Vehicles</u>	
10	2002 – 2003	ES300
11	2004 – 2006	ES330
12		
13	2007 – 2010	ES350
14	1998 – 2006	GS300
15	2007 – 2010	GS350
16	1998 – 2000	GS400
17	2001 – 2007	GS430
18	2007 – 2010	GS450h
19		
20	2008 – 2010	GS460
21	2003 – 2009	GX470
22	2010	HS250h
23	2008 – 2010	IS F
24	2006 – 2010	IS250
25	2010	IS250c
26		
27	2001 – 2005	IS300
28	2006 – 2010	IS350

2010	IS350c
1999 – 2000	IS400
1998	LS400
2001 – 2006	LS430
2007 – 2010	LS460
2008 – 2010	LS600h
1998 – 2007	LX470
2008 – 2010	LX570
2004 – 2006	RX330
2007 – 2010	RX350
2006 – 2008	RX400h
2010	RX450h
1998 – 2000	SC300
1998 – 2000	SC400
2002 – 2010	SC430

Scion Vehicles

2005 – 2010	Scion tC
2008 – 2010	Scion xB
2008 – 2010	Scion xD

IV. FACTUAL BACKGROUND

A. Toyota's Marketing Campaigns Promise Safety and Lead to Consumer Trust in the Toyota Brand

140. Toyota has consistently marketed its vehicles as "safe" and proclaimed that safety is one of its "highest corporate priorities." It has promoted ETCS as providing "stable vehicle control." Examples of such representations follow.

141. Toyota's 1996 Annual Report explained that safety always has been a top priority in each phase of Toyota's research and development. But translating that effort into "overall safety gains" required an "integrated methodology that unifies evaluation criteria for safety throughout development organization." In a 1996 brochure entitled "Toyota and Automotive Safety," Toyota again stated, "[a]t Toyota, we feel that building safe automobiles is the most important thing we can do." Toyota explained this focus on safety is part of its broad philosophy:

The more indispensable automobiles become, the greater they affect society in terms of safety and the environment. We at Toyota are fully aware of our responsibilities in this regard. We do our utmost to minimize our products' environmental impact and work hard to ensure overall safety. This means identifying the causes of any problems, devising workable remedies, and then putting those remedies into action.

142. Toyota's safety promises included its new electronic throttle control system that it began to implement in the late 1990s. When Toyota began installing ETCS in the 1998 Lexus, it announced ETCS as one of the latest developments:

1 The intelligent electric throttle control system (ETCS-i)
2 gives improved acceleration control under all driving
3 conditions. It provides excellent response and stable
4 vehicle control, especially when the road is slippery.
5 Using ETCS-i the throttle valve opening is controlled by a
6 throttle actuator which is a small electric motor. Under
7 normal road conditions the throttle opens in direct
8 proportion to the accelerator providing maximum response
9 and performance.
10

11 However, under slippery road conditions and with the snow
12 mode selected the actuator slows the throttle opening
13 relative to the accelerator to suppress sudden engine output
14 and provide improved acceleration control.
15

16 The ETCS-i is controlled by the engine management
17 computer and communicates with the intelligent automatic
18 gear shift and the traction control systems.
19

20 The release claimed “[t]he safety and security of driver and passenger has always
21 been an absolute priority for Lexus.”

22 143. The Toyota Camry, in which some of the earliest deadly sudden
23 acceleration accidents occurred, was marketed by Toyota as a high quality and safe
24 family vehicle. According to a Toyota press release:

25 The fifth-generation Toyota Camry, introduced for 2002,
26 has become the platinum standard in midsize family sedans
27 by offering more of everything sedan buyers want – room,
28

1 comfort, performance, *safety and value – along with*
2 *award-winning Toyota quality*. “Camry has come to define
3 what a family sedan should be,” said Don Esmond, Toyota
4 Division senior vice president and general manager. “It’s
5 [sic] continuing success in the U.S. stems from the
6 combination of truly unbeatable quality, comfort and value
7 that it provides.” [Emphasis added.]
8

9 144. TMS touted safety as a key feature of Lexus vehicles in a 2002 press
10 kit:

11 Raising the Standards on Standard Safety Features.

12 **The Lexus Commitment to Safety**

13
14 Lexus designs all its new vehicles to provide customers
15 with advanced safety engineering and technology. Lexus
16 also recognizes the driver’s responsibility to operate a
17 vehicle in as safe a manner as possible, and the company
18 has been at the forefront of technology that enhances both
19 passive safety (occupant protection in a collision) and
20 active safety (driving dynamics).
21

22 **Road-Reading Throttle Control**: Seeking to enhance
23 driving smoothness at every level, Lexus equipped the
24 LS 430 with a system called Intuitive Powertrain Control.
25 Working with the electronic throttle control (drive by
26 wire), the system helps to smooth out acceleration from a
27
28

standing start by very slightly delaying throttle opening when the driver steps on the accelerator pedal.

145. TMC highlighted safety as a key quality in a 2003 brochure:

Toyota Next Generation Technology

We are stepping up our safety technology development to ensure that customers can enjoy their vehicles in safety. In addition to “passive” safety technology, Toyota is energetically developing “active” safety systems that prevent collisions. We are working particularly hard to develop advanced safety systems based on our key peripheral monitoring technologies.

146. In a press kit regarding the 2003 Prius, Toyota proclaimed its bold use of more “drive by wire” (electronic rather than mechanical features), including a drive-by-wire throttle:

Many of the new technologies used in the Prius – some unique to the car and world firsts – have been made possible by Toyota’s bold move to redefine the vehicle’s power train and electrical architecture. The higher voltages created by the batteries and converter have enabled Toyota’s engineers to equip the Prius with a far larger suite of ‘drive-by wire’ technologies than has previously been seen in any production car. Throttle, transmission and braking is [sic] all electronically controlled and free of the traditional mechanical linkages.

1 147. The same brochure lists the new electronic throttle as a safety feature of
2 the car: “Safety ... First car in the world to use ‘by-wire’ technology for throttle,
3 brakes and gearshift simultaneously.” The brochure describes Toyota’s “radical”
4 and “futuristic” adoption of more electronically controlled features in the Prius
5 because of their increased reliability, including:
6

7 By suppressing mechanical and hydraulic links and
8 replacing them with electric and electronic connections it’s
9 possible to achieve shorter activation times. In addition,
10 the communication between all these systems will be
11 faster. “By-wire” also brings advantages in weight
12 reduction and saves precious space that can be used to
13 house other systems...

14 “By-wire” technology was originally developed for the
15 aerospace industry, where certain mechanisms had to be
16 activated without any hydraulic or mechanical link. The
17 only way to achieve this was through an electronic
18 connection and electric activation. This technology not
19 only saves weight and space, but also provides a more
20 immediate action than hydraulic or mechanical links, with
21 even higher reliability.

22 For this reason, Prius uses more “by-wire” technology than
23 any other car on the road today. Throttle, brakes, shift
24 lever, Traction Control and Vehicle Stability Control Plus
25
26
27
28

1 use this technology to improve their operation or even to
2 provide improved ergonomics.

3 148. In an advertisement appearing in the June 2003 issue of GOOD
4 HOUSEKEEPING, Toyota promised the Sienna had “more safety.”

5 149. In a 2004 press release introducing the new Prius, TMS claimed:

6 Designed to easily accommodate a small family, the 2004
7 Prius is also designed to provide the level of safety a family
8 car buyer demands. Passive safety features include front
9 seatbelts with pre-tensioners and force limiters, 3-point
10 seatbelts for all rear seating positions and two-step dual
11 front airbags (SRS), with driver and passenger side and
12 curtain airbags available as an option.

13 Prius also features a high level of dynamic control, with
14 some features that are not yet available in other midsize
15 cars. The standard anti-lock brake system (ABS) integrates
16 Brake Assist and Electronic Brake Distribution features,
17 which can help apply maximum braking pressure in an
18 emergency stop. Vehicle Stability Control (VSC) is
19 available as an option. The new Hill Acceleration Control
20 helps the driver maintain better control on ascents and
21 descents.

22 The new Prius uses an electronically controlled “throttle-
23 by-wire” throttle, which provides greater precision than a
24 conventional cable-type throttle setup. A new by-wire shift
25
26
27
28

1 control replaces the traditional gearshift lever and allows
2 tap-of-the-finger shifting using a small joystick mounted on
3 the dash.

4 150. This general promise of safety and specific promise that the new
5 electronic components being installed in Defective Vehicles are more reliable than
6 their mechanical predecessors is a repeated theme in Toyota marketing:
7

- 8 • 2004 Toyota 4Runner press release: “It features a
9 new linkless electronic throttle control system with
10 intelligence (ETCS-i) that helps improve
11 performance and increase fuel economy...*The*
12 *4Runner utilizes the latest technology to deliver a*
13 *high level of occupant safety.*” [Emphasis added.]
- 14 • August 2004 Lexus Press Kit: “Technical
15 innovation is a key element of Lexus’s all-around
16 excellence, *delivering real benefits to owners in*
17 *terms of safety*, performance, comfort and
18 convenience.” [Emphasis added.]
- 19 • November 2004 GOOD HOUSEKEEPING: “Your
20 destination should always be safety. And [] Toyota
21 SUV’s raise the standard....”
- 22 • In GOOD HOUSEKEEPING’s November 2004 issue and
23 elsewhere: “Safety First to Last,” an advertisement
24 for RAV4, Sequoia and Land Cruiser.
25
26
27
28

- 1 ● 2005 Press Release regarding Toyota SUVs:
2 ““Toyota customers have long counted on the brand
3 for the best in performance, quality and durability,’
4 said [Don] Esmond [senior vice president and
5 general manager, Toyota Division]. ‘*They can take*
6 *comfort knowing that driving safety is just as high a*
7 *priority in our full line of SUVs.’” [Emphasis*
8 added.]
- 10 ● In GOOD HOUSEKEEPING’s May 2001 issue: “Happy
11 Mother’s Day from the people obsessed with safety,”
12 an advertisement for the Sienna.
- 14 ● In GOOD HOUSEKEEPING’s March 2001 issue, Special
15 Advertising Section: “Serious about safety. Camry
16 utilizes the latest technology to ensure you and yours
17 arrive at your destination safe and sound.” Also,
18 “Value and safety. Part of the Corolla equation has
19 always been high value and high safety.”

21 151. These proclamations of “safety” and “reliability” were false and
22 misleading because they failed to disclose the dangerous SUA defect and fail-safe
23 mechanism defects. Toyota knew or should have known these representations were
24 false and misleading because, as discussed in detail below, Toyota knew there was a
25 significant increase in SUA events in vehicles with electronic throttle controls over
26 vehicles with mechanical throttle controls.

1 152. In 2004, TMS issued a brochure that discussed the safety features of the
2 Sienna:

3 A safe place for your children to grow up. Sienna has a
4 proud safety heritage, boasting some of the very best scores
5 in its class on government and insurance industry crash
6 tests. We've equipped the 2004 Sienna with even more
7 safety features. [Lists the safety features.]
8

9 153. In 2004, TMS issued a press kit noting that its RAV4 had enhanced
10 safety features:

11 The second-generation model, designed in Southern
12 California by Toyota's Caltex Design Research and
13 introduced for the 2001 model year, increased Toyota's
14 share of this growing segment. The 2004 revision is
15 designed to strengthen the brand's position in the segment
16 that it created, and to give the customer even greater value
17 and enhanced standard safety features.
18

19 "Toyota invented the formula for this segment, and for
20 2004 we're perfecting it with more of what everyone who
21 buys a small SUV wants – more power, more safety
22 features, more style and more value," said Don Esmond,
23 Toyota Division senior vice president and general manager.
24 "What's more RAV4 still holds the ultimate advantage
25 with Toyota quality."
26
27
28

1 154. In a 2005 press release, TMS boasted about its safety in its RAV4,
2 4Runner, Land Cruiser and Sequoia SUVs:

3 “Toyota offers one of the widest selections of SUVs on the
4 market, and we equip every model with the same level of
5 advanced safety technology,” said Don Esmond, senior
6 vice president and general manager, Toyota Division. “By
7 making this technology standard on all our SUV models,
8 Toyota provides the customer with peace of mind when
9 purchasing and when driving.”
10

11

12 “Toyota customers have long counted on the brand for the
13 best in performance, quality and durability,” said Esmond.
14 ‘They can take comfort knowing that driving safety is just
15 as high a priority in our full line of SUVs.’
16

17 155. A 2006 brochure devoted entirely to Toyota’s safety efforts
18 acknowledged Toyota’s responsibility as a vehicle manufacturer for the safety of its
19 vehicles. The brochure stated that “Toyota is working to reduce traffic accidents,
20 deaths and injuries” because accidents “have an enormous economic impact: lost
21 productivity, medical bills and compensation for victims, physical losses of vehicles
22 and structures and institutional costs (insurance management, police, trial costs,
23 etc.).” The brochure then explained how Toyota pursues what it refers to as “real
24 safety”:
25

26 A fundamental component of building safe cars is
27 gathering information and analyzing why accidents occur
28

1 and what causes injuries. Toyota analyzes data from real
2 accidents that take place all over the world. By analyzing
3 accident data and using simulation, Toyota develops new
4 safety technologies, testing them on actual vehicles before
5 being offered to the public in our product line-up. This is a
6 perpetual cycle through which Toyota seeks to enhance
7 safety technologies and reduce accidents continuously.
8

9 These same messages were echoed in safety brochures used by TMS in 2007. These
10 statements were false and misleading because Toyota had not performed the tests
11 necessary to diagnose, identify and fix the defect causing SUA.
12

13 156. In the 2007 “Camry Owners Warranty Manual,” Toyota represented that
14 it builds “vehicles of the highest quality” and “reliability”:

15 At Toyota, our top priority is always our customers. We
16 know your Toyota is an important part of your life and
17 something you depend on every day. That’s why we’re
18 dedicated to building products of the highest quality and
19 reliability.
20

21 Our excellent warranty coverage is evidence that we stand
22 behind the quality of our vehicles. We’re confident – as
23 you should be – that your Toyota will provide you with
24 many years of enjoyable driving.
25

26 * * *
27
28

1 Our goal is for every Toyota customer to enjoy outstanding
2 quality, dependability and peace of mind throughout their
3 ownership experience.

4 157. This warranty language appears in identical text for all Toyota models.
5 The foregoing language was false and misleading because in fact Toyota vehicles
6 were not of the highest quality and reliability but instead were unsafe and unreliable
7 due to the SUA defect and the failure to have an adequate brake-override and other
8 fail-safe mechanisms.
9

10 158. In September 2009, Toyota announced a new marketing campaign that
11 highlights six claims that Toyota has achieved through its philosophy of *kaizen*, or
12 “constant improvement.” Included in the six claims are “Dependability,” “Quality,”
13 “Reliability” and “Safety.”
14

15 159. A 2010 video of Toyota’s Star Safety System includes the following
16 description of Toyota’s standard for vehicle control safety:

17 If a stereo system comes standard on an SUV, shouldn’t a
18 safety system? Introducing Toyota’s Star Safety System
19 TM, a combination of five safety features that comes
20 standard with every one of Toyota’s five SUVs: Vehicle
21 Stability Control, Traction Control, Anti-lock Brakes,
22 Electronic Brake-force Distribution, and Brake Assist. All
23 designed for one purpose: to help keep the driver in
24 control of the vehicle at all times. Because when it comes
25 to the well-being of you and your passengers, Toyota has
26 raised the standard.
27
28

1 The video is misleading as it does not mention the vehicle recalls, the unintended
2 acceleration defect or the lack of a fail-safe mechanism to override unintended
3 acceleration. Written advertisements also made representations about the Star Safety
4 System as part of an accident avoidance system that “keeps you in control and out of
5 harm’s way.” Toyota knew these representations were false due to the deaths and
6 crashes it was aware of due to SUA and lack of a fail-safe.
7

8 160. In a video released in February 2010, Toyota states:

9 For over 50 years providing you with a safe, reliable and
10 high quality vehicles has been our first priority. In recent
11 days, our company hasn’t been living up to the standards
12 that you have come to expect from us or that we expect
13 from ourselves. That’s why 172,000 Toyota and dealership
14 employees are dedicated to making things right. We have a
15 fix for our recalls. We stopped production so we could
16 focus on our customers’ cars, first. Our technicians are
17 making repairs. We’re working around the clock to ensure
18 we build vehicles of the highest quality, to restore your
19 faith in our company.
20
21

22 The commercial does not mention that the recalls do not explain even a majority of
23 the reports of unintended acceleration.

24 161. These claims of safety were intended to and did cause individuals to
25 trust the safety of Defective Vehicles and purchase them. As stated in a 1998
26 Corolla brochure, “Toyota is now one of the most trusted names in the automotive
27 world – one of the few things you can really depend on.” As stated in a 2004 Lexus
28

1 LS brochure, “[t]he value of owning a Lexus involves much more than just its
2 purchase price. It also includes our well-earned reputation for vehicle dependability,
3 projected low repair costs and high retained value. In addition to such intangibles as
4 outstanding customer satisfaction, unparalleled quality, peace of mind and loyalty.”
5 Even Toyota’s logo of three overlapping ovals is meant to convey a trust between the
6 customer and Toyota.⁷

8 162. Despite Toyota’s proclamations of safety and severe testing regimes, it
9 was also growing rapidly, adding new technology to its vehicles and increasingly
10 unable to live up to its promises.

11 **B. Toyota’s Electronic Throttle Control System and Its Limited Fail-Safe**
12 **Mechanism**

13 163. Toyota calls its electronic throttle control system the ETCS-intelligent,
14 or ETCS-i. ETCS-i activates the throttle utilizing the command from the driver’s
15 foot that is conveyed electronically from two position sensors in the accelerator
16 pedal, processed in the engine control computer and then transmitted to the throttle.
17 Toyota began installing ETCS-i in models of the 1998 Lexus. This ETCS included a
18 mechanical link that shut off the throttle.

19 164. In 2001, Toyota began producing the substantially redesigned 2002
20 Camry. It was the first Toyota to be equipped with linkless ETCS-i, which was one
21 of several new or revised vehicle systems (including transmission and braking
22 systems) introduced for 2002 Toyota Camrys, Solaras and the Lexus ES300 line.
23 Linkless ETCS-i did not have a mechanical link to shut the throttle.
24
25
26
27

28 ⁷ See http://www2.toyota.co.jp/en/vision/traditions/nov_dec_04.html.

1 165. Toyota's earlier ETCS-i equipped vehicles retained a mechanical
2 system that would close the throttle if the electronic system failed. However, Toyota
3 had phased out these mechanical linkages by the time it incorporated ETCS-i into the
4 2002 Camry. Toyota knew other manufacturers continued to use a manual fail-safe
5 mechanism. For example, Toyota knew Audi had a system that mechanically closed
6 the throttle when the brakes were applied.⁸
7

8 166. In order to address potential malfunctions of the ETCS-i – in other
9 words, instances where the control strategy of the vehicle has become
10 compromised – all ETCS employ the same four fail-safe strategies. The fail-safe
11 strategies are:
12

- 13 a. If the engine throttle plate is physically stuck in a
14 position different from that corresponding to the
15 accelerator position, or the engine control computer
16 fails, the engine's fuel supply should cut off and
17 result in an engine stall;
- 18 b. The "single-point" failure of one accelerator pedal
19 position sensor is intended to result in a 70% to 75%
20 reduction in throttle capacity;
- 21 c. The "double-point" failure of both accelerator pedal
22 position sensors should close the throttle to idle; and
23
- 24 d. If one or both throttle position sensors fail, or the
25 throttle itself is not responding properly to the
26

27 ⁸ TOY-MDLID00041130T-0001.
28

1 accelerator pedal but the throttle itself is not
2 physically stuck, the throttle should close but will
3 provide minimal acceleration.

4 167. As explained herein, Toyota knew no later than 2002 that these fail-
5 safes were insufficient to prevent SUA events in its vehicles and that additional fail-
6 safes were necessary. Toyota did not, however, move to address these issues by
7 installing additional fail-safes.

8
9 168. Toyota had several options. For example, Toyota could have installed a
10 software subroutine that cuts the throttle when the brake pedal is depressed, which
11 would mitigate many of the failure mechanisms causing SUA. Or, Toyota could
12 have employed a hardware-redundant, fault tolerant solution (BMW's approach).
13 Or, Toyota could have provided an override of the engine control module, such as a
14 key switch to physically remove the power to the Engine Control Module ("ECM").
15 Or, Toyota could have installed a multiple-redundant cross-check ECM or a bus
16 traffic cross-check system. Toyota did none of these things.

17
18 169. In 2007, recognizing the risks of unintended acceleration, "TMS
19 suggested that there should be 'a fail safe option similar to that used by other
20 companies to prevent unintended acceleration.'"⁹ Toyota did not act on this
21 suggestion until 2010.

22
23 **C. Toyota Receives Complaints and Is Investigated for Unintended**
24 **Accelerations Beginning in 2002**

25 170. Toyota had advance notice of a defect and safety risks involving SUA in
26 ETCS-i equipped vehicles as early as 2002. Toyota hid this notice from the public

27
28 ⁹ TOY-MDLID00041130T-0001.

1 through calculated manipulation of information supplied to NHTSA during its
2 various investigations of SUA incidents. Toyota exploited strategic relationships
3 with current and former NHTSA employees and negotiated “deals that limited the
4 nature and scope of NHTSA’s investigations.” Toyota knew that these limited
5 investigations were unlikely to reveal a defect in the ETCS and did everything it
6 could to keep it that way.
7

8 **1. First reports of unintended acceleration to Toyota**

9 171. On February 2, 2002, Toyota received its first consumer complaint of a
10 2002 Camry engine surging when the brakes were depressed. Toyota received ten
11 other similar complaints before August 2002.
12

13 172. In March 2002, TMS asked TMC to investigate the root cause of the
14 surging. On May 20, 2002, internal records reported that the “root cause of the
15 ‘surging’ condition remains unknown” and “[n]o known remedy exists for the
16 ‘surging’ condition at this time.”¹⁰
17

18 173. In response to a NHTSA investigation into similar incidents, Toyota
19 issued at least three “Technical Service Bulletins” related to SUA. On August 30,
20 2002, Toyota released a bulletin alerting that some 2002 Camry vehicles “may
21 exhibit a surging during light throttle input at speeds between 38-42 MPH with lock-
22 up (L/U) ‘ON.’” Toyota advised that the cars’ ECM calibration had been revised to
23 correct the problem. Yet, on December 23, 2002, Toyota released another bulletin
24 noting that 2002 and 2003 Camrys, produced at Toyota Motor Manufacturing of
25 Kentucky (“TMMK”), “may exhibit a triple shock (shudder) during the shift under
26

27
28 ¹⁰ TOY-MDLID00062906.

1 ‘light throttle’ acceleration.” The bulletin advised dealers to follow the repair
2 procedure in the bulletin to rectify the situation. Less than nine months later, Toyota
3 released a nearly identical advisory notice on May 16, 2003, which stated that some
4 2003 Camrys “may exhibit a surging during light throttle input at speeds between 38-
5 42 mph with lock-up (L/U) ‘ON.’” Again, Toyota claimed the ECM calibration had
6 been revised to correct this condition. Toyota did not disclose the existence of these
7 technical service bulletins to consumers, or the fact that Toyota could not solve the
8 problem.
9

10 174. On August 31, 2002, Toyota recorded its first warranty claim to correct
11 a throttle problem on a 2002 Camry. Customer warranty claims are handled by the
12 TMS Claims Department in Torrance, California.¹¹
13

14 175. On April 17, 2003, Peter Boddaert of Braintree, Massachusetts, filed with
15 NHTSA a report of SUA involving his 1999 Lexus. In response, NHTSA opened
16 Defect Petition DP03-003. Mr. Boddaert petitioned the agency to analyze 1997-2000
17 Lexus vehicles for “problems of vehicle speed control linkages which results [sic] in
18 sudden, unexpected excessive acceleration even though there is no pressure applied to
19 the accelerator pedal.” In his petition, Mr. Boddaert noted that 271 other complaints
20 about these vehicles had been lodged on NHTSA’s website, 36 of which involved
21 problems with “vehicle speed control.” Of those 36 complaints, several involved
22 collisions, including one in which a Lexus had “collided with five other cars in the
23 space of ½ mile before it could be stopped.”
24
25
26
27

28 ¹¹ See TOY-MDLID00023851.

1 **2. Reports of SUA in Toyotas with ETCS are 400% higher than in**
2 **Toyota's with mechanical throttle controls**

3 176. On January 15, 2004, Carol Mathews asked NHTSA to investigate 2002
4 and 2003 Lexus ES300s, "alleging that [her] throttle control system malfunctioned
5 on several occasions, one of which resulted in a crash." On March 3, 2004,
6 NHTSA's ODI opened a Preliminary Evaluation (PE04-021). NHTSA documents
7 describe the problem to be investigated as: "Complainants allege that the throttle
8 control system fails to properly control engine speed resulting in vehicle surge." The
9 investigation was initially expected to cover more than one million 2002-2003
10 Camry, Camry Solara and Lexus ES300 vehicles. ODI had received 37 complaints
11 and reports of 30 crashes resulting in five injuries.
12

13 177. Mr. Scott Yon was the designated investigator. He would remain
14 NHTSA's principal investigator on many subsequent SUA-related investigations and
15 developed a close relationship with Toyota executives, some of whom had been
16 NHTSA employees.
17

18 178. The NHTSA investigation described the defect allegations as:
19 Allegations of (A) an engine speed increase without the
20 driver pressing on the accelerator pedal or, (B) the engine
21 speed failing to decrease when the accelerator pedal was no
22 longer being depressed – both circumstances requiring
23 greater than expected brake pedal application force to
24 control or stop the vehicle and where the brake system
25 function was reportedly normal.¹²
26

27
28 ¹² TOY-MDLID00041712.

1 179. On June 3, 2004, Scott Yon sent to Christopher Santucci, a Toyota
2 employee in Technical and Regulatory Affairs, an e-mail showing a greater than
3 400% difference in "Vehicle Speed" complaints between Camrys with manually
4 controlled and electronically controlled throttles:
5

6 From: Yon, Scott

7 Sent: Thursday, June 03, 2004 9:15 AM

8 To: Chris Santucci (Toyota.com)

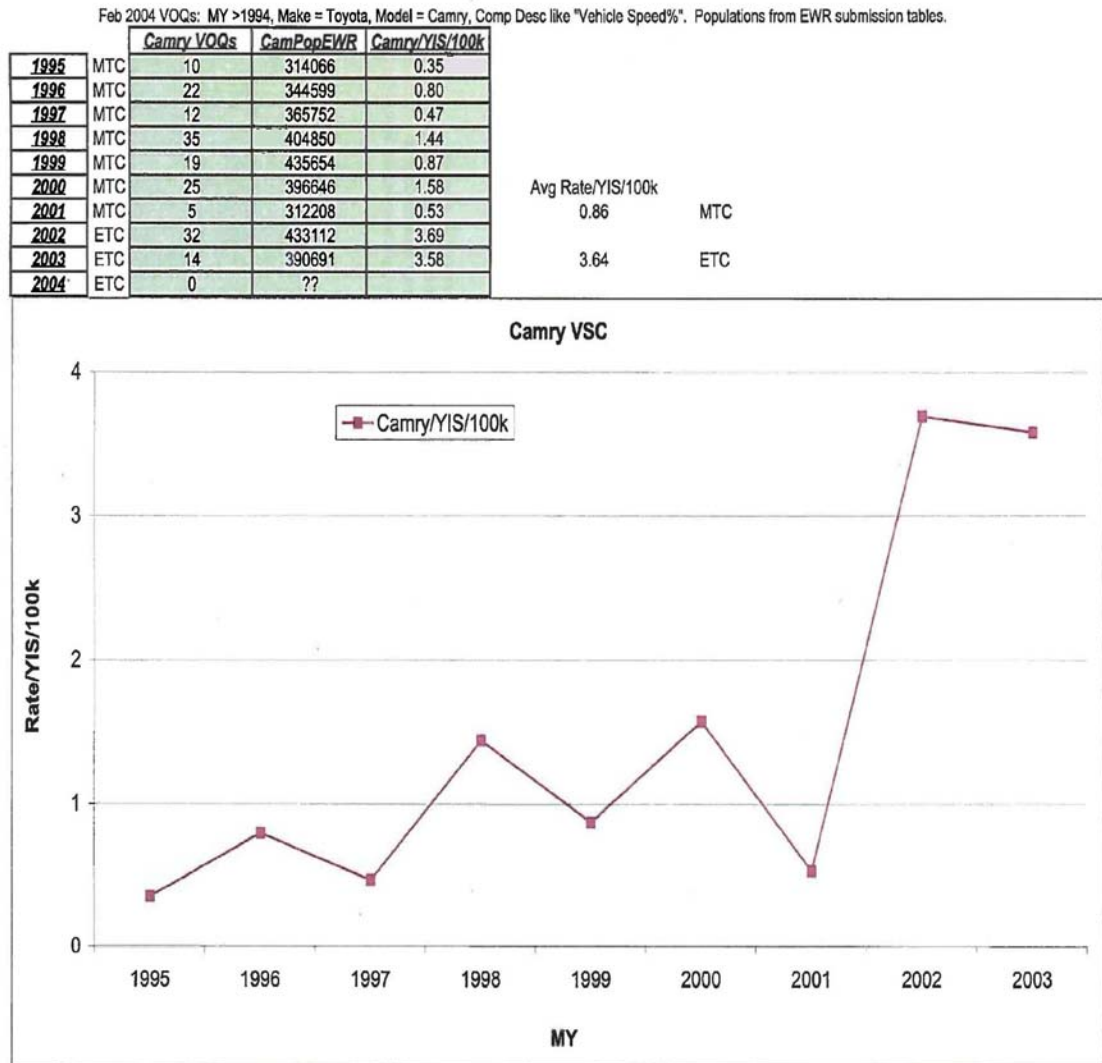
9 Subject: For review

10 Categories: PE04021-ToyotaThrottleControl

11 Attachments: CamryVSCTrend-200402.pdf

12 See attached. Give me a call, when you have time; I want
13 to discuss the submission and the attached.
14

15 Scott
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180. Motor vehicle manufacturers frequently re-design their vehicles, as when Toyota implemented ETCS. But having taken that step, Toyota should have monitored NHTSA's consumer safety database for indications of changing patterns in the complaints by model that signaled the need to review the safety of ETCS and the need to implement a robust fail-safe, including, but not limited to, an effective brake-override.

181. Publicly available consumer complaints which exclude the 37,000 complaints Toyota has yet to reveal, show a pronounced increase in SUA complaints

1 from Toyota Camry owners after Toyota introduced ETCS-i in that vehicle.

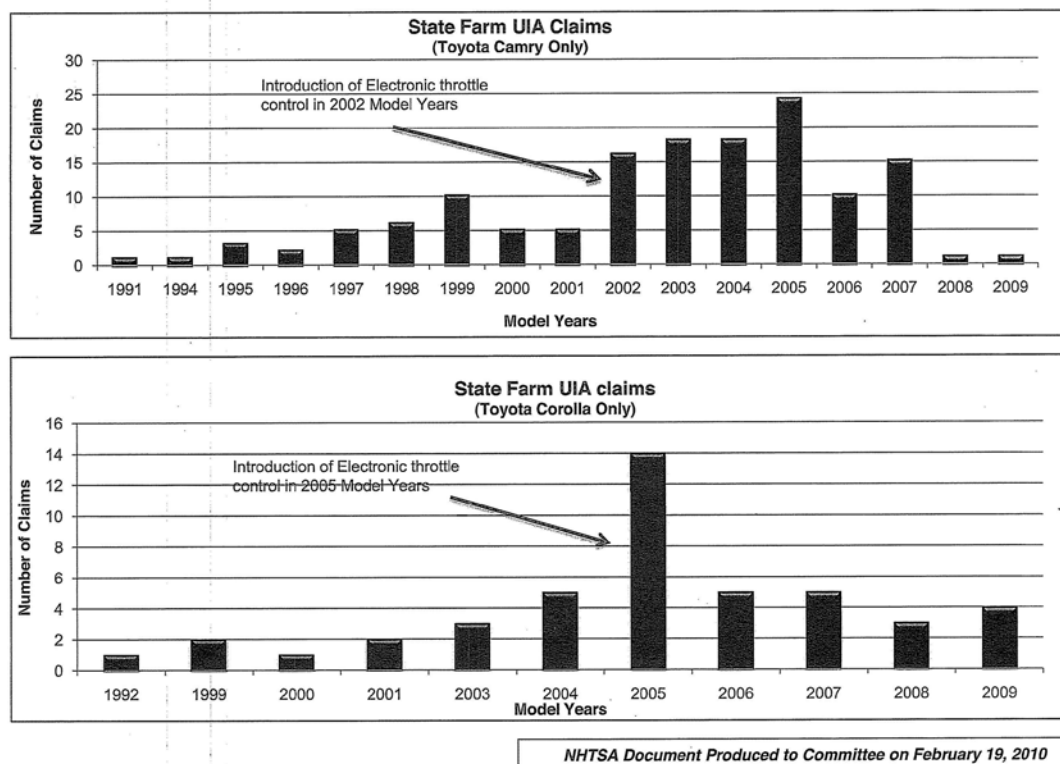
2 Through April 30, 2003, more than 9% of all complaints for Camrys equipped with
3 ETCS-i related to SUA, while only 5% of all complaints (41 of 810) for Camrys
4 without ETCS-i related to SUA. This difference is statistically significant based on
5 Fisher's two-tailed exact test, $p = 0.0369$. The twin Lexus ES model showed a very
6 similar pattern of SUA complaints.
7

8 182. The Toyota Tacoma pickup also showed a marked increase in SUA
9 complaints after Toyota introduced ETCS-i in this model. By the end of January
10 2007, nearly 5% of all complaints (12 of 241) for Tacomas equipped with ETCS-i
11 related to SUA (12 of 241) while only 2% of all complaints (9 of 449) for Tacomas
12 without ETCS-i. This difference is statistically significant based on Fisher's two-
13 tailed exact test, $p = 0.0368$.
14

15 183. A similarly striking trend occurs in several other models: Lexus ES
16 (5-fold increase), Lexus RX (1.8-fold increase), 4Runner (6-fold increase), Avalon
17 (2-fold increase), Camry (3.7-fold increase), Highlander (2.8-fold increase), and
18 Tacoma (14-fold increase).
19

20 184. State Farm observed the same trend in Toyota Camrys and Corollas, as
21 reflected in the chart below (which State Farm provided to Congress):
22
23
24
25
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State Farm UIA Claims (Pre-ETC v. Post-ETC)



185. This statistically significant increase in the number of unintended acceleration complaints put Toyota on notice that there was a defect in its vehicles with ETCS that could cause SUA.

186. Toyota's complaint database was not the only source of information available to Toyota. Internally, as early as May 5, 2003, in secret "Field Technical Reports" Toyota was documenting "sudden[] acceleration against our intention," as an "extremely serious problem for customers."¹³ A technician reported a SUA incident and stated "we found mis-synchronism between engines speed and throttle position movement." The probable cause was unknown but "[e]ven after

¹³ TOY-MDLID00087951-52.

1 replacement of those parts, this problem remains.” The author requested immediate
2 action due to the “extremely dangerous problem” and “we are also much afraid of
3 frequency of this problem in near future.”

4 187. At the outset of its 2004 investigation into SUA in Toyota vehicles,
5 NHTSA asked Toyota for information on similar incidents. The decision on how to
6 respond to NHTSA emanated from a group of Toyota employees, including
7 Christopher Tinto and Christopher Santucci in Washington, D.C., as well as others
8 from the Product Quality and Service Support group in Torrance, California. The
9 scope of NHTSA’s information request became the subject of negotiations between
10 Messrs. Tinto and Santucci of Toyota and NHTSA representatives. Ultimately,
11 NHTSA agreed to exclude, certain highly relevant categories of incidents from its
12 investigation.
13
14

15 188. In response to NHTSA’s information request, Toyota denied that a
16 defect existed, stated that there was no defect trend and that its electronic control
17 system could not fail in ways its engineers had not already perceived. Toyota
18 reported 123 complaints that it said “may relate to the alleged defect.” But Toyota
19 excluded from its response the following relevant categories of complaints, among
20 others:
21

- 22 (1) An incident alleging uncontrollable acceleration that
23 occurred for a long duration;
- 24 (2) An incident in which the customer alleged that he
25 could not control a vehicle by applying the brake; and
26
27
28

1 (3) An incident alleging unintended acceleration
2 occurred when moving the shift lever to the reverse or the
3 drive position.

4 189. The Toyota Defendants thus concealed from NHTSA and the public
5 relevant customer complaints.
6

7 190. NHTSA closed the investigation without testing of the integrity of the
8 ETCS-i, without reviewing any records of Toyota's test reports concerning the
9 ETCS-i, and without reviewing whether the braking system was effective in an open-
10 throttle condition. Toyota itself did not have the capability of fully modeling, testing
11 or validating the safety of ETCS-i because of its failure to implement standard design
12 platforms, its failure to develop and/or conduct meaningful ECM test procedures,
13 and its failure to exercise appropriate control over third-party subsystem designs.
14

15 191. While Toyota denied any SUA defect, independent experts concluded
16 otherwise. In May 2004, a Forensic Technologist and MSME examined a vehicle in
17 New Jersey that had experienced a SUA event. The report was forwarded to Toyota
18 on January 13, 2005. It concluded that the vehicle's ETCS was not operating
19 correctly.¹⁴ This report was not provided to NHTSA.
20

21 192. Internally, Toyota was replicating the SUA defect; "was able to
22 duplicate customer complaints ... engine speed remains at 5,000 rpm." In these
23 cases it was often secretly replacing throttle bodies.

24 193. On July 8, 2005, Mr. Jordan Ziprin of Phoenix, Arizona, filed a formal
25 request for a defect investigation into unintended acceleration in the 2002 Toyota.
26

27
28 ¹⁴ TOY-MDLID90064979.

1 194. On August 5, 2005, NHTSA opened Defect Petition DP05-002 to
2 investigate Mr. Ziprin's claims. Scott Yon again was assigned as NHTSA's
3 investigator. The target vehicle population was 1,950,577 2002-2005 Camrys and
4 Lexus ES models. The Opening Resume stated, in part:

5 The Petitioner owns a 2002 Camry and states that in July
6 2005 the vehicle accelerated without application of the
7 throttle pedal while reversing out of a driveway; the
8 acceleration caused a loss of vehicle control and
9 subsequent crash.... The Petitioner states a similar throttle
10 control incident occurred in April 2002 and additionally
11 cites other ODI reports which also allege loss of throttle
12 control and or uncontrollable acceleration. The Petitioner
13 discusses NHTSA investigation PE04-021, which involved
14 the Camry and ES models, and makes a request for certain
15 information. ODI will evaluate the petition and other
16 pertinent information.
17
18
19

20 195. After receiving the petition and reviewing the underlying complaints,
21 Toyota did not launch its own investigation or identify any new tests that it would
22 perform to check for a defect in the ETCS. Instead, Toyota's formal responses to
23 NHTSA's investigation recommend NHTSA deny the petition based only on the
24 information Toyota had previously provided "as well as the lack of evidence
25 supporting concurrent failure of the vehicle braking systems." After explaining how
26 the electronic throttle system and its fail-safes were designed to operate, Toyota
27 concluded:
28

1 [T]here is no factor or trend indicating that a vehicle or
2 component defect exists. Toyota believes this Defect
3 petition to be similar to other, prior petitions and
4 investigations into mechanical throttle controls. Toyota
5 has found no evidence that differentiates that consumers
6 alleging vehicles equipped with electronic throttle controls
7 can suddenly accelerate when compared to those equipped
8 with mechanical throttle controls. Toyota has not found
9 any evidence on the subject vehicles of brake failure, let
10 alone brake failure concurrent with ETC failure.
11

12
13 *See* Toyota's Response re DP05-002, dated November 15, 2005.

14 196. This response of "no evidence" ignores and concealed the spike in SUA
15 events that occur within one year of a vehicle switching to ETCS, a trend known to
16 Toyota.

17 197. Mr. Yon, who is not an electrical engineer or expert in electronic control
18 systems, inspected Mr. Ziprin's vehicle and found no evidence of a system
19 malfunction. Mr. Ziprin directed to NHTSA's attention some 1,172 Vehicle Owner
20 Questionnaire reports, from which ODI identified 432 reports that alleged an
21 "abnormal throttle control event." The 432 reports involved 2002 to 2005 Camry,
22 Solara and Lexus ES models (all equipped with ETCS). Toyota had knowledge of
23 the 432 reports.
24

25 198. Upon learning of the denial, Mr. Ziprin, who had conducted
26 considerable research into the issues set forth in his petition and filed his findings
27
28

1 with the agency, reacted with an angry letter to NHTSA dated January 5, 2006, and
2 accused the agency of bias:

3 Frankly, I anticipated that decision from the very first time
4 I was in contact with Mr. Scott Yon, the assigned
5 investigator. He made statements during our first
6 telephone conversation which tended to establish that the
7 purpose of his inquiry was to establish a basis to dismiss
8 the petition based upon NHTSA policy rather than to deal
9 with and examine all of the facts and circumstances
10 involved. When Mr. Yon subsequently visited Phoenix, he
11 told me quite clearly and emphatically that it was
12 NHTSA's firm policy not to investigate safety issues
13 regarding hesitations in acceleration by vehicles.

16 199. On September 14, 2006, ODI opened Defect Petition DP06-003 in
17 response to a request from William Jeffers III for an investigation of 2002-2006
18 Camry and Camry Solara vehicles for incidents relating to vehicle surging. Scott
19 Yon was again assigned to investigate. According to the petition, Mr. Jeffers owned
20 a 2006 Camry and previously owned a model-year 2003 Camry. He alleged that both
21 vehicles exhibited "engine surging," which he described as a short duration (one- to
22 two-second) increase in engine speed occurring while the accelerator pedal is not
23 depressed. For his 2006 vehicle, the petitioner estimated that six to eight surge
24 incidents, of varying magnitude, occurred over the course of 10,000 miles and nearly
25 seven months of ownership. In the last and most alarming instance, Mr. Jeffers noted
26 that the malfunction indication lamp was illuminated during and after this incident.
27
28

1 200. Toyota received a fax from NHTSA on September 15, 2006, stating that
2 it had agreed to open the defect petition. In internal e-mails, Chris Santucci
3 expressed skepticism of Mr. Jeffers' account of the unintended acceleration and hope
4 that NHTSA would not ask Toyota to provide any additional data as part of the
5 investigation:
6

7 Hopefully, this is just an exercise that NHTSA needs to go
8 through to meet its obligations to the petitioner. Hopefully,
9 they will not grant the petition and open another
10 investigation.¹⁵
11

12 201. Although Mr. Jeffers reported that the brake system was effective at
13 overcoming the engine surge, he informed NHTSA of his concerns that this might
14 not always be the case. NHTSA summarized in its ODI Closing Resume: "[H]e is
15 concerned about reports filed with NHTSA alleging uncontrolled surging in MY
16 2002 to 2006 Camry vehicles bringing those vehicles to a high rate of speed (in some
17 cases, purportedly, with the brakes applied)."
18

19 202. While NHTSA's investigation was ongoing, two other related events
20 occurred. First, on February 5, 2007, a fatal crash occurred in San Luis Obispo,
21 California, involving a 2005 Camry that suddenly accelerated in a restaurant parking
22 lot, went through a guard rail and over a cliff into the Pacific Ocean. Second, on
23 March 14, 2007, TMS President James Lentz received a letter at his office in
24 Torrance from a consumer explaining a SUA event in a 2003 Toyota Camry.¹⁶ The
25 writer insisted he was pressing the brake, and not the accelerator, when the event
26

27 ¹⁵ TOY-MDLID00044092.

28 ¹⁶ TOY-MDLID90045217.

1 occurred. Further, the writer believed that the vehicle's electronic throttle caused the
2 event.

3 203. After the cursory evaluation of Mr. Jeffers' claims, NHTSA denied the
4 petition and stated it found no evidence of a defect.

5
6 204. Toyota never fully disclosed to the regulators the actual numbers of
7 customer reports of unintended acceleration events in the various Toyota models
8 under investigation that the company had received. In fact, Toyota disclosed that it
9 had received only 1,008 such complaints. Three years later, however, Toyota would
10 be required to disclose to Congressional investigators that it had received 37,900
11 complaints potentially relating to sudden acceleration in Defective Vehicles from
12 January 1, 2000, through January 27, 2010.

13
14 205. One of Toyota's strategies in responding to SUA complaints has been to
15 blame any report of SUA on driver error. Toyota failed to disclose that its own
16 technicians often replicated SUA events without driver error. The following is an
17 example:

18 **Condition Description**

19 Customer states while at a stop the engine started to rev
20 and tried to take off. Customer turned off vehicle and
21 restarted. Vehicle continue to rev when running. Turning
22 vehicle off 3rd time and restarted vehicle operated
23 normally after third start.

24 **Diagnostic Steps**

- 25
26
27 • Technician who was inspecting the vehicle had
28 driven it approximately 10-12 minutes.

- 7-8 minutes into the drive the technician was sitting at a stop light. When the stop light changed the tech started to lightly accelerate.
- After traveling 20-30 feet the vehicle exhibited a slight hesitation *then began to accelerate on its own*.
- Engine speed was estimated to have gone from 1500 rpm to 5500 rpm at the time of the occurrence.
- Vehicle traveling 9-10 mph at time of occurrence. Approximate maximum speed reached was 20 mph prior to accelerator pedal release / brake application.
- Estimated throttle position at the time of the occurrence was 15-20 percent.¹⁷ [Emphasis added.]

206. Upon the technicians replicating a SUA event, Toyota decided it was in the customer's "interest" for Toyota to buy back the vehicle, meaning in reality that Toyota decided to remove this vehicle from the market since it was experiencing SUA incidents that could not be blamed on the driver. And, to further conceal the defect Toyota required as a condition of the vehicle repurchase that the owner sign a confidentiality agreement and agree not to sue. This confirmation of a clear SUA event not reported to NHTSA and was concealed.

207. In a Field Technical Report dated April 18, 2006, involving a 2007 Camry, a technician confirmed the "Vehicle Lunges forward":

Condition Description

¹⁷ TOY-MDLID00075242.

Vehicle lunges forward when coming to a stop

Diagnostic Steps:

- Drove vehicle at 55mph, got vehicle to go into 5th gear, when slowing down and coming to stop, right at 5 mph the vehicle would lunge forward
- Drove vehicle in 4th gear, and when coming to a stop, once the vehicle reached 5mph, vehicle would lunge forward
- Drove vehicle in 3rd gear, and when coming to a stop, when the vehicle reached 5mph, vehicle would lunge forward
- Each of these test were complete with the A/C on and off, no change

Probable Cause

Unknown¹⁸

208. "Lunging" apparently was a problem service managers were aware of:

From: Mike Robinson/=Mobile/Toyota.

Sent: 5/25/2007 5:15 PM.

¹⁸ TOY-MDLID00065813

1 To: Gordon Rush/=Lexus/Toyota@Toyota.
2 Cc: Gary_Heine@Toyota.com.
3 Bcc:
4 Subject: Avalon Drivability Customer Verbatim
5 Information - Updated.
6

7
8 Gordon, can you please review the below comments and let
9 me know if this is the type of information you are looking
10 for? I have added some PQS data verbatims as well, but
11 was unsure if they would be suitable for your purposes.
12

13 ***
14

15
16 “(I) Have recently purchased a 2006 Avalon LTD and have
17 experienced the hesitation problem. The situation is
18 dangerous ... not so much the hesitation as the lunge after
19 the hesitation. Toyota had better get going quick as I
20 predict this will result in numerous accidents and possible
21 deaths. I have talked with my service manager and he said,
22 “they all do it”
23

24 Regards,
25 Mike
26 Mike Robinson
27 Technical Supervisor
28

1 Quality Assurance Powertrain Group

2 Toyota/Lexus Product Quality & Service Support

3 Office: (310) 468-2411

4 209. On another occasion in October 2007, a Field Technical Report
5 confirmed a case of SUA in an ES330.¹⁹
6

7 210. In a Dealership Report in 2005, on a 2005 Sequoia, the dealer verified
8 two separate SUA incidents and identified the probable cause as a “software issue of
9 the engine control unit.”

10 211. In December 2003, in a secret Field Technical Report, a technician
11 verified a surge event during “cold engine operation” even where the scan tool
12 showed no DTC.
13

14 212. In a series of Field Technical Reports from 2006-2010 involving Toyota
15 Camrys, technicians from Hong Kong confirmed UA events and that these events
16 were not caused by pedal or floor mats. The UA events were duplicated without
17 triggering a DTC. These technicians strongly urged TMS to investigate since the
18 problem was highly dangerous and the incidents were stacking up. In many of these
19 instances, the report noted that “no effective rectification can be done at this
20 moment” and that the exact cause was “unknown.” These reports “strongly request
21 TMS to investigate this case a top priority.”²⁰
22

23 213. In an Intra-Company Communication, between Toyota Motor North
24 America, Inc. and TMS, the company confirmed a SUA event and that floor mats
25 were not the issue:
26

27 ¹⁹ TOY-MDLID00075600.

28 ²⁰ TOY-MDL-88641.

1 **Introduction**

2 The purpose of this document is to provide a summary of a
3 Go-and-See related to a customer's claim of Cruise Control
4 Malfunction in a 2009 Tacoma vehicle.

5 **Customer Observed Condition**

6 Customer alleges that he experienced the following:

7 Vehicle: 2009 Tacoma with 2,387 Miles (at time of
8 incident)

- 9 1. Vehicle was traveling at a steady 60 MPH Speed on the
10 Freeway, with cruise control engaged
- 11 2. As he reached a slight incline, he started to approach a
12 slower vehicle in the lane in front of him
- 13 3. He applied pressure to the accelerator (25% - 30%
14 throttle angle) and increased speed to 75 MPH to pass
15 the other vehicle
- 16 4. Once he passed the slower vehicle, he returned to the
17 right hand lane and released the accelerator (expecting
18 the vehicle to return to the previously set speed)
- 19 5. After releasing the accelerator pedal, the vehicle
20 continued to accelerate
- 21 6. He stepped on the brakes and the vehicle acceleration
22 did not stop
- 23 7. Customer cycled the key to the "OFF" position and
24 slowed to a stop using the brakes

8. After sitting for a couple of minutes on the side of the road he restarted the engine and it operated normally and took it to the dealership

Dealer Investigation

Upon arrival at the dealership the Following was performed / found:

1. Inspected Floor Mats and found them properly secured, with no signs of witness marks upon them
2. No Present, Pending or History of any DTC's in the ECM (also confirmed at TMS by MILi)
3. Engine connections were secure and showed no damage
4. The vehicle was driven for 361 miles, at which time an abnormal condition *was duplicated* (an account of this condition can be found on Page 2.)

Requests

- Vehicle repurchase has been agreed upon, please evaluate vehicle upon receipt

Service Manager Observed Condition:

On 7/19/09, one of the dealership's Service Managers drove the vehicle and observed the following:

1. Vehicle was being driven on the Freeway with the Cruise Control engaged at a 70 MPH Target Speed on Flat Terrain

- 1 2. The Service Manager depressed the accelerator pedal
- 2 slightly (less than 10% throttle input)
- 3 3. As the vehicle reached what was estimated as 71 MPH,
- 4 it downshifted abruptly and accelerated at what was
- 5 perceived as a high throttle angle
- 6 4. As there was no traffic in front of him, the Service
- 7 Manager removed his foot from the accelerator
- 8 immediately upon the downshift and moved it
- 9 completely away from the pedal area
- 10 5. The vehicle continued to accelerate at what felt like an
- 11 estimated at a 70% throttle input with no pedal contact
- 12 from the driver
- 13 6. Within 300 feet of the initial acceleration, the vehicle
- 14 had reached 95 MPH. The estimated time to reach this
- 15 speed from 71 MPH was “between 5 and 10 Seconds”
- 16 7. The driver then applied the brake pedal and the
- 17 acceleration stopped
- 18
- 19
- 20
- 21

22 NTF Techstream Data

- 23 • As the Service Manager who experienced the condition
- 24 above is considered to be trustworthy and reliable, the
- 25 vehicle will be repurchased for further investigation
- 26 under SETR 9J467
- 27
- 28

1 214. On March 20, 2007, a truck owned by the service manager at Cedar
2 Rapids Toyota experienced a SUA event and confirmed it was not caused due to
3 floor mats. The throttle pedal assembly was replaced.

4 215. On March 29, 2007, ODI, apparently prompted by customer complaints
5 of unwanted acceleration in 2007 Lexus ES350 vehicles, opened PE07-016. The
6 principal investigator was again Scott Yon. The stated “Problem Description” in the
7 Opening Resume was “[t]he accessory floor mat interferes with the throttle pedal.”

8 216. Toyota attempted to prevent the opening of the investigation by offering
9 to send a letter to 2007 ES350 owners “reminding them not to install all weather mats
10 on top of existing mats.”²¹ NHTSA did not agree, due to “too many complaints on
11 this one vehicle to drop the issue” and because the results “of a stuck throttle are
12 catastrophic.”

13 217. On April 5, 2007, ODI sent its Information Request to Toyota, describing
14 its purpose as being “to investigate incidents of *vehicle runaway* due to interference
15 between the Lexus accessory floor mat (all-weather floor mat) and the accelerator
16 pedal” in 2007 Lexus ES350 vehicles. (Emphasis added.) The request further
17 described “[a]llegations of A) excessive engine speed and or power output without the
18 driver pressing on the accelerator pedal or B) the engine speed and or power output
19 failing to decrease when the accelerator pedal was no longer being depressed or,
20 C) the subject component interfering with the operation of the throttle pedal.”

21 218. During this inquiry, Toyota was careful to eliminate any hint that a much
22 broader issue was at stake – namely, SUA. Telling a consumer of a SUA defect is far
23

24
25
26
27
28 ²¹ TOY-MDLID00003908.

1 more serious than being told of a possible “mat” problem. In describing the NHTSA
2 investigation TMS eliminated reference to throttle control problems and changed the
3 description to a “floor mat” problem:²²

4 Sorry we had a last minute change to the Q&A. Please
5 utilize this revised version of the Statement and Q&A. The
6 issue has been posted on the NHTSA website.
7

8 Sorry!

9 [Old]

10 NHTSA has received five consumer complaints regarding
11 *unintended throttle control* in the subject vehicles.
12

13 [New]

14 NHTSA received five consumer where the All Weather
15 Floor Mat may have interfered with the accelerator pedal
16 operation.
17

18 * * *
19
20
21
22
23
24
25
26
27
28

²² TOY-MDLID00000566.

George Morino
National Manager
Quality Compliance Department
Product Quality and Service Support
Toyota Motor Sales, U.S.A., Inc.
Tel. 310-468-3392
Fax 310-468-3399 [Emphasis added.]

219. Culling any reference to vehicle speed control has been a standard tactic at Toyota. In 2005, in connection with the IS 250 All Weather Drive investigation, TMC removed any reference to speed control in letters sent to owners: “They pulled out the ‘vehicle speed control’ part. NHTSA may come back, but TMC wanted to try.”²³

220. Another tactic TMC has used with NHTSA to keep the SUA defect a secret has been to keep NHTSA away from employees who had knowledge of ECU failures. In 2007, while preparing for a meeting with NHTSA, Toyota plotted to keep away from the meeting the “engineer who knows the failure”:

[I]f the engineer who knows the failures well attends the meeting, NHTSA will ask a bunch of questions about the ECU. (I want to avoid such situations).²⁴

221. Toyota kept documents and informed personnel away from NHTSA despite the fact it knew the results of a “stuck throttle are ‘catastrophic.’”²⁵

²³ TOY-MDLID00002896.

²⁴ TOY-MDLID00075574.

²⁵ TOY-MDLID00003908.

1 222. While this investigation was pending, an SUA victim sent Toyota
2 employees a video of his SUA event that showed the brake lights were on while the
3 car was accelerating – conclusive proof that the incident could not be chalked up to
4 “driver error.” As usual, Toyota found nothing wrong with the car. The SUA victim
5 informed the Toyota specialist of other instances that needed investigation:
6

7 One just occurred last Friday, June 15, when this person
8 pulled into a parking lot with very few vehicles, he applied
9 the brakes and the Tacoma just kept going, he wasn’t about
10 to collide so, he let off the brake and re-applied the brake
11 and the vehicle stopped. The vehicle is a 2004 Tacoma,
12 purchased new by this person. The other incident involves
13 a 2006 Tacoma where all of sudden at a stop the
14 tachometer shot up to approximately 6,000 or 6,800 RPM’s
15 with his *right* foot off the accelerator and the *right* foot on
16 the brake.²⁶
17

18 All of these incidents were concealed from NHTSA and the public.
19

20 223. On August 8, 2007, ODI upgraded the preliminary evaluation to
21 investigate unintended accelerations in a target population of 98,454 2007 Lexus
22 ES350s. The Opening Resume for EA07010 states, in part, as follows:

23 [T]he agency has 40 complaints; eight crashes and 12
24 injuries. Complainants interviewed by ODI stated that they
25 applied the throttle pedal to accelerate the vehicle then
26

27
28 ²⁶TOY-MDLID00206917.

1 experienced unwanted acceleration after release.

2 Subsequent (and sometimes repeated) applications of the
3 brake pedal reduced acceleration but did not stop the
4 vehicle. In some incidents drivers traveled significant
5 distances (miles) at high vehicle speeds (greater than
6 90 mph) before the vehicle stopped (ODI notes that
7 multiple brake applications with the throttle in an open
8 position can deplete the brake system's power [vacuum]
9 assist reserve resulting in diminished braking).
10

11 224. While Toyota was pointing the finger at floor mats it was investigating
12 UA events that it knew were not caused by floor mats, including an event where the
13 service manager at Cedar Rapids Toyota confirmed the UA was not caused by the
14 mat. Toyota replaced the throttle pedal assembly.
15

16 225. Despite having received a number of complaints of unintended
17 acceleration that could not be explained in terms of floor mats, Mr. Yon's description
18 of the investigation made no mention of any intent to study the electronic throttle
19 control system employed. Toyota did not study the ETCS system either.
20

21 226. In internal e-mails between Toyota employees including Chris Santucci
22 and Chris Tinto exchanged in August 2007, Santucci stated that NHTSA
23 investigators had discussed with him fail-safe mechanisms used by other vehicle
24 manufacturers to protect against unintended acceleration. The fail-safes that NHTSA
25 regulators discussed with him included "[u]sing ETC to shut down throttle control"
26 and "cutting off the throttle when the brakes are applied." Mr. Santucci also noted,
27 "Jeff [Quandt, Chief, Vehicle Controls Division, Office of Defects Investigation]
28

1 mentioned that another manufacturer allows the engine to be shut off if you press the
2 ignition button repeatedly.” Despite the growing number of SUA complaints starting
3 from 2002, Toyota did not use the fail-safe mechanisms used by other manufacturers
4 to protect against unintended acceleration.
5

6 227. While Toyota was attempting to deflect this inquiry, it was aware that
7 the root cause of SUA was not often traceable: “[O]ne big problem is that no codes
8 are thrown in the ECU, so the allege [sic] failure (as far as we know) can not be
9 documented or replicated.” The implications were “[t]he service tech therefore can’t
10 fix anything, and has no evidence that any problem exists.”²⁷ Toyota would later
11 claim the lack of a diagnostic code indicated that there was no SUA problem.
12

13 228. On August 30, 2007, ODI filed a memo about the inspection of a Lexus
14 ES350 that had experienced SUA, and ODI conducted a telephone interview with the
15 owners. An inspection of the vehicle found all-weather mats installed at all four
16 seating positions. The driver’s side all weather mat was found to be installed by
17 itself; it was not on top of another floor mat. While the installed mat was found to be
18 unsecured by the retention hooks, the mat did not interfere with the accelerator pedal
19 in the position in which it was originally inspected.
20

21 229. While this investigation was ongoing, a woman named Jean Bookout
22 was involved in a fatal crash in Oklahoma due to the unintended acceleration of a
23 2005 Camry. On September 20, 2007, Ms. Bookout and her best friend, Barbara
24 Schwarz, were exiting Interstate Highway 69 in Oklahoma in a 2005 Camry. As
25 Bookout drove, she realized that she could not stop her car. She pulled the parking
26

27
28 ²⁷ TOY-MDLID00050747.

1 brake and pushed the brake pedal, leaving a 100-foot skid mark from the right rear
2 tire, and a 50-foot skid mark from the left. As Bookout later stated, "I did everything
3 I could to stop the car."²⁸ The Camry, however, continued speeding down a ramp,
4 across another road and finally slamming into an embankment. Schwarz was killed;
5 Bookout spent a month in a coma and awoke permanently disfigured and disabled.
6

7 230. On September 26, 2007, Toyota issued a recall of 55,000 Lexus/Toyota
8 optional All-Weather Floor Mats. All owners of 2007 and early 2008 model year
9 Lexus ES350 and Toyota Camry vehicles were to be notified of the safety campaign
10 and the timing when the replacement mats would become available. Once the
11 replacement mats were available, a second owner notification would be sent to notify
12 owners to return their mats for the driver's seating position to any Lexus/Toyota
13 dealer for an exchange. Toyota also stopped the sale of the Toyota/Lexus All-
14 Weather Floor Mat designed specifically for 2007 and early 2008 model year Camry
15 and ES350 Lexus vehicles.
16

17 231. Internally, Toyota executives were pleased that NHTSA had limited the
18 ES350 issue to "floor mat issues" as opposed to SUA.²⁹
19

20 Of note, NHTSA was beginning to look at vehicle design
21 parameters as being a culprit, focusing on the accelerator
22 pedal geometry coupled with the push button "off" switch.

23 We estimate that had the agency instead pushed hard for
24 recall of the throttle pedal assembly (for instance), we
25
26

27 ²⁸ Los Angeles Times, *Runaway Toyota Cases Ignored*, November 8, 2009.

28 ²⁹ TOY-MDLID00004973.

1 would be looking at upwards of \$100M + in unnecessary
2 cost.

3 232. Other top level Toyota officials were incredulous with the news that
4 NHTSA had limited the issue to floor mats. Irv Miller of TMS observed when he
5 learned of the recall: “Yea I know, but floor mats!”³⁰
6

7 233. NHTSA remained concerned that a “serious issue” remains and that a
8 factor other than mats was causing SUA events. NHTSA was considering an
9 announcement that would instruct vehicle owners how to turn off the vehicle in the
10 event of a SUA event.³¹ NHTSA also expressed concern that other vehicles,
11 including Prius, Camry and Avalon maybe subject to floor mat jamming and pedal
12 design issues.³² Toyota did not disclose these concerns and took no action to remedy
13 these defects. Years later, in 2010, Toyota recalled the ES 350, Camry and Avalon,
14 due to a defect in the shape of the floor surface and the lack of adequate space
15 between the accelerated pedal and the floor.³³
16

17 234. On other occasions Toyota was able to keep NHTSA away from the
18 truth regarding SUA events by negotiating what terms it would use to search for
19 relevant complaints. An example occurred in September 2007 when the company
20 searched for incidents regarding “mats” as opposed to “surging.” A search for
21
22
23
24

25 ³⁰ TOY-MDLID00000601.

26 ³¹ TOY-MDLID00011140.

27 ³² TOY-MDLID00011139.

28 ³³ TOY-MDLID00200832.

1 surging on just the Camry in 2004 revealed “60,000 complaints.” Surging may be
2 related to SUA, but Toyota never revealed the 60,000 surging complaints.³⁴

3 235. In 2008, Toyota knew that it had received a “huge number of
4 complaints” alleging forms of UA Toyota labeled as “surge,” or “lunge” or “lurch” if
5 it searched for UA events just on the Camry:
6

7 Let’s discuss the response with George sometime on 10/13.

8 We just started to gather the field information in order to
9 update it requested in Q2, 3, 4 of IR for PE07-016.

10 However, I’m very concerned about how many customer
11 complaints will be extracted from CAN2000 by keyword
12 search which we usually do. Because NHTSA expanded
13 the scope of the subject vehicles to 2007-2009MY ES and
14 “CAMRY.” As you know, Camry has had an issue on the
15 6 speed automatic transmission and there may be a huge
16 number of complaints alleging the surge or lunch or lurch
17 and we usually include those words for the keyword
18 search. If this is the case, it will take long time to
19 complete.³⁵
20
21

22 236. Throughout Toyota’s consideration of SUA incidents, the “global
23 ramifications” of a vehicle defect was a motivating factor. Thus, for example, in
24 September 2009, Toyota executives indicated TMC would not easily budge from its
25 “no defect” position:
26

27 ³⁴ TOY-MDLID00083551.

28 ³⁵ TOY-MDLID0012726.

1 TMC on the other hand will most likely not easily budge
2 from their position that there is no vehicle defect.
3 Especially considering the global ramifications. In
4 addition, since no one of any rank (VP or higher) at TMS
5 has communicated the significance and impact of this
6 issue, TMC may feel that we can weather an investigation
7 and additional media coverage.³⁶

9 237. As described herein, this “no defect” position and the worry of “global
10 ramifications” ultimately caused Toyota to offer fail-safe mechanisms such as a
11 brake-override as a “confidence” booster as opposed to a “safety recall.”

12 238. In an internal Toyota PowerPoint presentation by Chris Tinto dated
13 January 2008, Toyota characterized the Camry and Lexus ES floor mat investigation
14 as a “difficult issue” that it “ha[d] been quite successful in mediating.” The
15 presentation went on to note that such “mediations” were “becoming increasingly
16 challenging” and that “despite the fact that we rigorously defend our products
17 through good negotiation and analysis, we have a less defensible product.” Of
18 course “mediation” is not the equivalent of meeting the pledge of “safety” first that
19 Toyota had repeatedly promised vehicle owners.

20 239. An internal PowerPoint addressing “Key Safety Issues” contains the
21 following:

- 22 • “Sudden Acceleration” on ES/Camry, Tacoma, LS, etc.

23
24
25
26
27
28

³⁶ TOY-MDLID00075713.

- Recurring issue, PL/Design Implications.³⁷

240. The footnote to the slide has an entry stating “[f]laws in Toyota Regulatory and Defect Process.”³⁸

241. Toyota was also pleased that the floor mat issue was limited to All Weather Floor Mats as opposed to floor mats in all vehicles. Internally it recognized that “floor mat interference is possible in any vehicle with any combination of floor mats.” Despite this admission, no broader floor mat recall or effort to implement a brake-override took place.³⁹

242. No broader floor mat recall was implemented despite evidence that Prius, Camry and Avalon models were sensitive to floor mat interference and that the problem was not limited to after market mats.⁴⁰

3. Unintended acceleration in Tacomas and Siennas

243. Toyota employees, including George Morino from the Torrance, CA office, were aware of increasing reports of SUA in Tacomas in late 2007. On November 6, 2007, Toyota employees reviewed the NHTSA consumer complaints database and counted “21 complaints pertaining to the Tacoma sudden acceleration.”⁴¹ Toyota internal e-mails also indicate that they were finding Internet blog posts regarding SUA events in Tacomas in November 2007.⁴²

³⁷ TOY-MDLID00052959.

³⁸ *Id.* at 52963.

³⁹ TOY-MDLID00002839.

⁴⁰ TOY-MDLID00021197.

⁴¹ TOY-MDLID00028006.

⁴² TOY-MDLID00012135.

1 244. Toyota received a report in 2006 that a 2006 Tacoma “suddenly
2 accelerated out of control:

3 Mr. _____ has reported that his 2006 Toyota
4 Tacoma suddenly accelerated out of control into a
5 telephone pole as he was backing on 10/21/06.
6

7
8 After the truck collided with the pole he shifted into Drive
9 and the truck accelerated at a high rate into a parked
10 vehicle and a trailer, pushing the trailer into another parked
11 vehicle.⁴³
12

13 245. An insurance investigator interviewed the mechanic who was a witness:

14 Mr. _____ observed the 2006 Toyota Tacoma as it
15 backed into the telephone pole. He said that the engine
16 was racing and after the collision with the pole, the vehicle
17 lunged forward colliding with another vehicle and the box
18 trailer. The vehicle became pinned under the front of the
19 box trailer which prevented it from traveling any further.
20

21
22 Mr. _____ said that he ran to the truck and assisted
23 the driver, Mr. _____, out of it.
24

25
26
27 _____
28 ⁴³ TOY-MDLID00206868.

1 I asked Mr. _____ as to how the engine
2 stopped racing. He said that the engine was still
3 racing/idling high at approximately 2500 - 3000 RPM's
4 after Mr. _____ exited the vehicle and while he was
5 standing in the parking lot, Mr. _____ said
6 that he reached in and turned the ignition key off to stop
7 the engine. Later, a police officer shifted the transmission
8 into park.
9

10
11 Mr. _____ offered to testify as to what he
12 witnessed in court if necessary. Because he is a mechanic,
13 I believe that he would be a formidable witness.
14

15 * * *

16 The most significant observation was made by the eye
17 witness, Mechanic _____ who witnessed the
18 incident and aided Mr. _____ from the truck. He
19 states that the engine was still racing at 2500-3000 RPM
20 after Mr. _____ exited the vehicle. The Toyota
21 was only brought under control when _____ reached
22 in and shut the engine off with the ignition key.
23
24
25
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1 As, _____ is employed by the City Tire as a
2 mechanic his estimate of the engine RPM's is rather
3 credible and consistent with Mr. _____'s report.⁴⁴

4 246. On January 10, 2008, William Kronholm of Helena, Montana, filed a
5 request for a defect investigation into unintended acceleration in 2006 Toyota
6 Tacoma pickup trucks. Kronholm reported experiencing two SUA incidents and
7 investigated the NHTSA complaint database for light truck fleets for model years
8 2006 and 2007. Under the category "vehicle speed control," Mr. Kronholm found 32
9 complaints of sudden unintended acceleration involving Tacomas, whereas the most
10 reported for any other manufacturer's trucks was one incident. Scott Yon was again
11 ODI's principal investigator.
12

13 247. Internally, Toyota was diligently working hard to "write a letter for the
14 committee to try to stop this from moving forward – we need to keep this within
15 NHTSA rather than have it expand to a hearing."⁴⁵
16

17 248. In NHTSA's February 8, 2008 information request to Toyota, it defined
18 the defect as:
19

20 [A]llegations or complaints that the accelerator and or
21 cruise control system operated improperly, malfunctioned,
22 failed, or operated in an unsafe manner, including but not
23 limited to, allegations that the engine speed (power output)
24 increased without driver application of the accelerator
25 pedal (including allegations that may be related to cycling
26

27 ⁴⁴ ⁴⁴ TOY-MDLID00206876-6880.

28 ⁴⁵ TOY-MDLID00050749.

1 of the air conditioning compressor clutch or other so called
2 'normal' idle speed/engine control functions), or
3 allegations that the engine speed (power output) failed to
4 return to an idle state after the operator released the
5 accelerator pedal (including allegations that may be related
6 to engine speeds experienced between gear shifts on
7 manual transmission vehicles at road speeds) or allegations
8 that the cruise control system caused the engine speed
9 (power output) to change in an unsafe manner.
10

11 249. While the Tacoma investigation was ongoing, ODI opened a
12 Preliminary Evaluation into unintended acceleration incidents involving 54,000 2004
13 Toyota Siennas. PE08-025 resulted from a report that a driver applied the accelerator
14 pedal to accelerate the vehicle and experienced unwanted acceleration upon releasing
15 the pedal. Field data collected by ODI indicated that when a retainer pin is missing
16 from the driver's side center stack/console trim panel, the panel can detach from the
17 console, and the accelerator pedal can become entrapped under the trim panel
18 causing unwanted acceleration.
19
20

21 250. Five years earlier, in April 2003, Toyota had experienced an unintended
22 acceleration event during testing of a 2004 Sienna. This incident was purportedly
23 also caused by a trim panel on the center console interfering with the accelerator
24 pedal.
25

26 251. On April 18, 2008, Toyota filed its first response in DP0-8001, reporting
27 a total of 326 unique vehicle complaints of unintended acceleration in Tacomas.
28

1 252. On April 25, 2008, Toyota filed its second response in the Tacoma
2 investigation, outlining its investigation into the problem and analyzing the consumer
3 complaints submitted to Toyota and to NHTSA that could be related to alleged
4 unintended acceleration. In Toyota's view, neither the consumer complaints nor the
5 field study indicated the existence of any defect in the subject vehicles, much less a
6 safety-related defect.
7

8 253. Toyota disputed the assertion in the petition that the 32 complaints in
9 the NHTSA database "in and of themselves justify opening an investigation."
10 Toyota claimed that the Tacoma had been the subject of extensive media coverage
11 related to the possibility of sudden acceleration. In addition, Toyota claimed that
12 there had been a high level of internal activity on this subject (as far back as early
13 2007) including reports by members of Tacoma user groups detailing conversations
14 with ODI staff and providing ODI contact information.
15

16 254. On June 11, 2008, Toyota sent its first response to ODI in PE08-025
17 regarding 2004 Siennas, followed by a second response on June 25, 2008. Toyota
18 stated that complaints about unintended accelerations in Siennas took two forms:
19 allegations of excessive engine speed and/or power output without the driver
20 pressing on the accelerator pedal, or the engine speed and/or power output failing to
21 decrease (subside) when the accelerator pedal was no longer being depressed by the
22 driver. Toyota also said that it saw no evidence of a defect, explained that the trim
23 could catch the accelerator, and described the design changes it made to the trim
24 panel to correct the problem. Toyota did not disclose that it considered and knew it
25 needed to incorporate a brake-override and other fail-safe mechanisms that were not
26 in Toyota vehicles to address this problem.
27
28

1 255. On August 27, 2008, NHTSA denied the Tacoma petition, concluding:
2 The complaints fell into three groups. A majority of the
3 complaints may have involved the Tacoma's throttle
4 control system. Some complaints did not involve a failure
5 of the throttle control system. For the remaining reports,
6 although there may have been an issue with the throttle
7 control system as one possible explanation, we have been
8 unable to determine a cause related to throttle control or
9 any underlying cause that gave rise to the complaint. For
10 those vehicles where the throttle control system did not
11 perform as the owner believes it should have, the
12 information suggesting a possible defect related to motor
13 vehicle safety is quite limited. Additional investigation is
14 unlikely to result in a finding that a defect related to motor
15 vehicle safety exists or a NHTSA order for the notification
16 and remedy of a safety-related defect as requested by the
17 petitioner. Therefore, in view of the need to allocate and
18 prioritize NHTSA's limited resources to best accomplish
19 the agency's safety mission, the petition is denied.
20
21
22

23 256. On October 15, 2008, Toyota made a confidential PowerPoint
24 presentation to ODI regarding unintended acceleration and trim interference in 2004
25 Siennas as part of EA08-014. Toyota demonstrated how an unrestrained early
26 design-level trim panel interacted with the accelerator after pedal depression. Toyota
27
28

1 also advised that the company was conducting a field survey to examine panel
2 retention and that preliminarily one vehicle had been identified with a concern.

3 257. On January 26, 2009, ODI closed EA08-014, regarding SUA involving
4 2004 early-production Siennas, after Toyota agreed to recall subject vehicles built
5 between January 10, 2003, and June 11, 2003. Toyota then issued Recall 09V023
6 for 26,501 model year 2004 Siennas. Toyota did not describe this as a defect, but
7 called the actions a “safety improvement campaign” that was not being conducted
8 under the Safety Act. Toyota’s recall instructed dealers to replace the original floor
9 carpet cover with the newer-design floor carpet (and retention clip) at no charge to
10 the owner. The repair was expected to reduce the potential for trim panel
11 interference with the accelerator pedal should the retaining clips become missing
12 because of improper service or other reasons. Dealers were to replace the retention
13 clip and floor carpet cover at no charge.

14 258. On March 19, 2009, Mr. Jeffrey Pepski of Plymouth, Minnesota filed a
15 detailed defect petition, asking NHTSA to re-open its sudden unintended acceleration
16 investigation into Lexus vehicles. Mr. Pepski was the owner of a 2007 Lexus
17 ES350. He experienced a sudden unintended acceleration event while driving at
18 high speed, in which the vehicle accelerated to 80 mph. Mr. Pepski tried pumping
19 and pulling up the accelerator with his foot to no avail. He explained the electronics
20 of the accelerator, brake pedals and throttle systems, and charged that the Lexus
21 ES350 vehicles violate several federal motor vehicle safety standards regarding brake
22 and throttle systems. He also disputed some of the statements from previous
23 investigations that drivers could easily stop the vehicle by depressing the ignition
24
25
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28

1 button for three seconds. He maintained that the owner's manual indicates that this
2 would lock the steering wheel and move it forward.

3 259. On April 8, 2009, ODI issued an Opening Resume for DP09-001 in
4 response to Mr. Pepski's petition. ODI characterized it as requesting "an additional
5 investigation into the unwanted and unintended acceleration of MY 2007 Lexus
6 ES350 as the initial investigation (PE7-016) was too narrow in scope and did not
7 adequately address all complaints made to the NHTSA with respect to vehicle speed
8 control concerns." Additionally, according to ODI, the petitioner requested an
9 "investigation of MY 2002-2003 Lexus ES300 for 'longer duration incidents
10 involving uncontrollable acceleration where brake pedal application allegedly had no
11 effect' that were determined not to be within the scope of Investigation PE04021."
12

13
14 260. On May 14, 2009, Toyota's Christopher Tinto filed a direct response to
15 Mr. Pepski's petition in DP09-001. Mr. Tinto dismissed all of the issues Mr. Pepski
16 raised in his petition and claimed there was no basis for an investigation. Mr. Tinto
17 stated that when Lexus inspected Mr. Pepski's vehicle, it found that the floor mat
18 was unsecured and blamed the event on pedal entrapment. Mr. Tinto maintained that
19 Toyota's electronic throttle and brakes systems were in compliance with all
20 applicable federal motor vehicle safety standards, and that Mr. Pepski had
21 misinterpreted the warnings in the owner's manual about steering wheel lockup
22 when the ignition is in the "Off" mode.
23

24 261. Toyota knew that NHTSA inspected Pepski's car and "did not see
25 clearly the witness marks of the carpeted floor mat in the forward unhooked
26 position" and instead "suspect[ed]" this was the case. Santucci made it clear that
27
28

1 NHTSA wanted Toyota to blame this on a floor mat issue, because if Toyota did not
2 do so, NHTSA would have to ask “for non-floormat reports”:

3 So they should ask us for non-floormat related reports,
4 right? But they are concerned that if they ask for these
5 other reports, *they will have many reports that just cannot*
6 *be explained. And since they do not think that they can*
7 *explain them, they don’t really want them.* Does that make
8 sense? I think it is good news for Toyota.⁴⁶ [Emphasis
9 added.]
10

11 262. What was good news for Toyota, *i.e.*, NHTSA avoiding inquiry into
12 non-floor-mat issues, was bad news for consumers who continued to purchase and
13 drive vehicles subject to a hidden SUA defect.
14

15 263. On October 29, 2009, NHTSA denied the Pepski petition. Once again,
16 ODI issued its denial without requiring Toyota fully to disclose the actual numbers
17 of customer reports of sudden unintended acceleration events in the Toyota models
18 under investigation it received.
19

20 **4. The floor mat recall**

21 264. In August 2009, Officer Mark Saylor, a 19-year veteran of the
22 California Highway Patrol, his wife, thirteen-year-old daughter and his brother-in-
23 law, Chris Lastrella, were driving in a 2009 Lexus ES350 loaned to them from the
24 dealership while Officer Saylor’s Lexus was being repaired. Witnesses later
25 reported that Officer Saylor had pulled onto the shoulder going roughly 25-45 mph
26

27 ⁴⁶ TOY-MDLID00052918.
28

1 and appeared to have some engine difficulty. Witnesses reported that Officer Saylor
2 turned on his emergency lights. Shortly thereafter the Lexus's speed accelerated to
3 over 100 mph. Chris Lastrella called 911 from the vehicle and reported that the
4 accelerator was stuck and "we're in trouble." He then repeated: "We're
5 approaching the intersection. We're approaching the intersection. We're
6 approaching the intersection." Others in the car could be heard saying "hold on" and
7 "pray." The Lexus then crashed into the back of an SUV and continued through a
8 fence, crashing head first into an embankment, becoming airborne, rolling over,
9 bursting into flames and coming to rest in a dry riverbed. All four members of the
10 Saylor family were killed by extensive blunt force injuries.

11
12 265. When officers inspected the vehicle, the all weather floor mat was
13 melted to the accelerator pedal and unsecured by the retaining clips. It was also the
14 incorrect all weather floor mat for that Lexus model. When officers tested the pedal
15 clearance using the same model of Lexus and the same mismatched floor mat, they
16 observed that the pedal could easily become stuck under its edge.

17
18 266. Officers investigating the Saylor tragedy also learned that a similar
19 complaint of unintended acceleration had been made about the vehicle involved in
20 the Saylor crash only days before it was loaned to Officer Saylor. The San Diego
21 County Sheriffs' report chronicles the prior complaint as follows:

22 [Frank Bernard] was on the Poway Road on-ramp to
23 Interstate 15 North. As he was merging onto the freeway,
24 he saw a truck nearby and accelerated 'briskly' to get in
25 front of it. Witness Bernard got onto the freeway, and once
26
27
28

1 in front of the truck, let his foot off the accelerator. [The
2 Lexus] kept accelerating on its own, to about 80-85 MPH.

3
4 Witness Bernard stopped on the brakes and tried to lift up
5 on the accelerator with his right foot. He was attempting to
6 access the shoulder of the freeway, and still applying the
7 brakes, was able to slow [the Lexus] to about 50-60 MPH.
8 While he was slowing, he pushed the ignition button 'a few
9 times' and was not able to turn the engine off. He also
10 'popped the throttle' with his foot to see if he could get it to
11 clear itself. None of this worked. [The Lexus] kept
12 moving at an uncontrolled and high rate of speed.
13
14

15
16 Witness Bernard kept on the brakes, slowing [the Lexus] to
17 25-30 MPH and pulled over to the shoulder. He was able
18 to then place [the Lexus] into neutral with the gear shift.
19 When he did this, the engine made a very loud whining,
20 racing sound. Witness Bernard was able to stop [the
21 Lexus].
22

23
24 Witness Bernard looked down at his feet and saw the
25 accelerator was stuck underneath the floor mat. He was
26
27
28

1 able to pull it up with his foot, and said he had to apply a
2 significant amount of pressure to do so.⁴⁷

3 267. Mr. Bernard told a receptionist at the dealership of the unintended
4 acceleration and that it was due to the floor mat.

5 268. The San Diego County Sherriff's Report concludes that the Saylor crash
6 was likely caused by the mismatched floor mat and the following "associated"
7 factors:

8 The vehicle was not equipped with a key that would other
9 wise allow for manual emergency shut off. The push
10 button ignition feature had no emergency instantaneous
11 shut capability.

12 As evidenced in the inspection of [the Lexus], the brakes
13 most likely failed due to over burdened, excessive, and
14 prolonged application at high speed.⁴⁸

15 269. The report also notes that additional electrical, mechanical or computer
16 generated factors could have played a role in the unintended acceleration.

17 270. Following the widespread publicity surrounding the four-fatality Saylor
18 crash near San Diego, Toyota issued a "Safety Advisory," saying that the company
19 had "taken a closer look" at the potential for the accelerator to get "stuck in the full
20 open position" *due to interfering floor mats*. The advisory stated that the company

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22
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27 ⁴⁷ TOY-MDLID000091970 at 9193.

28 ⁴⁸ *Id.* at 9197.

1 would soon be recalling certain 2007-2010 Camry and Lexus vehicles, 3.8 million in
2 all, to address the issue – the largest recall in Toyota’s history and the sixth largest in
3 the United States. According to Senator Waxman, Toyota’s advisory is dangerously
4 misleading, for the following reasons, among others:

5 By suggesting that only a trapped floor mat can cause a
6 loss of throttle and braking control, it lulls owners of
7 models with no driver’s side floor mat into believing there
8 is no possibility of a potentially catastrophic loss of throttle
9 and braking control. According to documents supplied by
10 Toyota to the Committee on Energy and Commerce of the
11 U.S. House of Representatives, fewer than 16% of sudden,
12 unintended acceleration events reported by customers
13 involved floor mats and/or “sticky pedals.”
14

15 The advisory also misleads owners with a driver’s-side
16 floor mat into believing that, in the event of a sustained
17 near-wide-open throttle malfunction, the first response
18 should be to visually determine if the floor mat is
19 interfering with the accelerator pedal.
20

21 271. On September 29, 2009, the same day that TMC recalled 3.4 million
22 vehicles in the United States because of possible floor mat entrapment, Toyota Motor
23 Europe issued a Technical Information (“TI”) to Toyota distributors in Austria,
24 Belgium, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany,
25 Greece, Holland, Hungary, Iceland, Ireland, Israel, Italy, Malta, Norway, Poland,
26
27
28

1 Turkey, Portugal, Russia, Slovenia, Spain, Sweden, Switzerland, Ukraine, the United
2 Kingdom, Georgia, Kazakhstan, and Romania identifying a production improvement
3 and repair procedure to address complaints by customers in those countries of sticky
4 accelerator pedals, sudden RPM increase and/or sudden acceleration – but nothing
5 similar was issued to warn United States distributors.
6

7 272. Despite its claimed extensive investigation into the sticky pedal
8 phenomenon, and its efforts to remedy the sticky pedal defect for overseas
9 consumers, TMC continued to conceal information from United States consumers
10 regarding potential causes for sudden unintended acceleration events. On
11 September 29, 2009, TMC issued a Consumer Safety Advisory claiming that the
12 sudden acceleration problem was caused by floor mats without mention of the
13 sticking accelerator pedal defect it knew about since July 6, 2006, at the latest, and
14 had confirmed no later than June 2009.
15

16 273. Contemporaneously with the floor mat recall, Toyota made media
17 statements inaccurately stating that NHTSA had determined that no defect exists in
18 vehicles wherein the driver's side floor mat is compatible with the vehicle and is
19 properly secured. For example, a November 2, 2009 press release issued from
20 Torrance, CA announced:
21

22 Toyota Motor Sales ... today announced that it has begun
23 mailing letters to owners of certain Toyota and Lexus
24 models regarding the potential for an unsecured or
25 incompatible driver's floor mat to interfere with the
26 accelerator pedal and cause it to get stuck in the wide-open
27 position. The letter, in compliance with the National
28

1 Traffic and Motor Vehicle Safety Act and reviewed by the
2 National Highway Traffic Safety Administration ... also
3 confirms that no defect exists in vehicles in which the
4 driver's floor mat is compatible with the vehicle and
5 properly secured.
6

7 274. On November 4, 2009, NHTSA issued a press release to correct this
8 misleading and inaccurate information. NHTSA clarified that it told Toyota and
9 consumers that "removing the recalled floor mats is the most immediate way to
10 address the safety risk and avoid the possibility of the accelerator becoming stuck."
11 NHTSA reiterated that the floor mat recall was simply an interim measure, and did
12 not correct the underlying defect.
13

14 275. Despite initiating its plan to repair defective accelerator pedals for
15 overseas consumers, Toyota's misinformation to United States consumers continued.
16 TMC posted the following response to a question posed by the LOS ANGELES TIMES:
17

18 Q2: Toyota has conducted numerous recalls related to
19 sudden acceleration over the past decade in the U.S.
20 and Canada, including two previous floor mat recalls.
21 But the problem has continued. Does this mean that
22 the previous recalls were not successful in eliminating
23 the problems and if so, why not? In particular, why
24 wasn't the 2007 recall of Lexus ES and Camry floor
25 mats effective in preventing catastrophic accidents
26 such as the Saylor case?
27
28

1 A. Toyota has conducted two all-weather floor mat
2 (AWFM) recalls after receiving reports that if the
3 floor mat (either by itself, or if it is placed on top of an
4 existing carpeted floor mat) is not secured by the
5 retaining hooks, the mat can move forward and
6 interfere with the accelerator pedal returning to the
7 idle position. If the mat is properly secured, it will not
8 interfere with the accelerator pedal.
9

10
11 As reported in the law enforcement investigation, the
12 floor mat in the Saylor accident was not only
13 improperly secured, it was incompatible and incorrect
14 for the vehicle. The recall recently announced
15 addresses the fact that incompatible floor mats, or
16 multiple floor mats could be installed and that the
17 remedy must address that possibility.
18
19

20 276. When Transportation Secretary Ray LaHood testified before the House
21 Sub-Committee in regard to the Toyota recalls, he explained that NHTSA officials
22 chose to meet directly with Toyota executives in Japan to discuss safety issues
23 because NHTSA “felt that maybe the people in Japan were a little bit safety deaf.”
24

25 **5. The sticky accelerator recall**

26 277. On or about October 13, 2009, TMC issued an Intra-Company
27 Communication (“ICC”) to Toyota personnel in Japan and in the United States
28 concerning a Toyota Corolla sold in Missouri that was the subject of a sticky

1 accelerator pedal complaint. The ICC noted that sticky pedal was identified on or
2 about September 24, 2009, five days prior to Toyota's floor mat advisory to United
3 States consumers (and the sticky pedal TI to European consumers also issued on the
4 same day). The ICC further documented that Toyota recovered the accelerator pedal
5 and installed it on a 2010 Corolla fleet vehicle, that Toyota verified the sticking
6 accelerator pedal, and that the subject accelerator pedal was then handed over
7 Customer Quality Engineering – Los Angeles for further analysis on or about
8 October 5, 2009.
9

10 278. On or about October 22, 2009, through October 28, 2009, Toyota issued
11 three Field Technical Reports ("FTRs") concerning sticky accelerator pedals in
12 Corollas sold in the United States and conducted a parts recovery.
13

14 279. On January 16, 2010, Katsuhiko Koganei (a.k.a. "Kogi"), TMS
15 Executive Coordinator – Corporate Communications, sent an e-mail to Mike Michels
16 at Toyota, stating "we should not mention about the mechanical failures of acc. [sic]
17 pedal, because we have not clarified the real cause of the sticking accelerator pedal
18 formally, and the remedy for the matter has not been confirmed."
19

20 280. The e-mail came three days before a meeting scheduled with (among
21 others) Toyota's two lead North American executives, James Lentz (Torrance, CA)
22 and Yoshimi Inaba (New York, NY), and NHTSA. It was copied to at least 15 other
23 Toyota Executives, including Irv Miller (Torrance, CA), TMS Group Vice President,
24 Environmental and Public Affairs.
25

26 281. On January 16, 2010, Irv Miller sent an e-mail to Koganei stating:

27 I hate to break this to you but WE HAVE A tendency for
28 MECHANICAL failure in accelerator pedals of a certain

1 manufacturer on certain models. We are not protecting our
2 customers by keeping this quiet. The time to hide on this
3 one is over. We need to come clean and I believe that Jim
4 Lentz and Yoshi are on the way to DC for meetings with
5 NHTSA to discuss options.
6

7
8 We better just hope that they can get NHTSA to work with
9 us in coming with a workable solution that does not put us
10 out of business.⁴⁹
11

12 282. The foregoing mechanical tendency for failure was known to Toyota for
13 years and still has not been properly disclosed.

14 283. Secretly while it was interacting with NHTSA on these issues, Toyota
15 was investigating SUA events observed by its own employees in Toyota vehicles
16 they were driving:

17 Jason,

18 Here is the summary of events.

19
20 Went across Buffalo Bridge, stopped & turned left on 35.

21 Went across bridge and started up the hill.

22 Briefly accelerated at W.O.T. for down shift.

23 Let off throttle & vehicle continued to accelerate.

24 Depressed brake (thinking something was wrong with
25 cruise control)
26

27
28 ⁴⁹ TOY-MDLID00027481.

1 No change vehicle continued to accelerate.
2 Depressed brake peddle hard, vehicle continued to pull.
3 Shifted to Neutral and engine revved to rev limiter.
4 Not for certain what occurred to get the throttle back to
5 normal condition, but I did move my foot around the
6 accelerator & brake peddle after the vehicle was in Neutral
7 & acceleration stopped.

8
9 David Kovich
10 Customer Quality Engineering (CQE-CIN), Quality
11 Division
12

13 284. On January 21, 2010, Toyota notified NHTSA that it was submitting a
14 “Defect Information Report” concerning a recall of eight models due to a “defect
15 [that] exists in the accelerator pedal assembly which may result in the accelerator
16 pedal becoming harder to depress, slower to return, or, in the worst case,
17 mechanically stuck”⁵⁰ Toyota issued this Defect Report despite indicating that
18 the percentage of vehicles estimated to experience malfunction was “unknown,”
19 meaning that Toyota felt the defect was so serious that a recall was required without
20 waiting for the defect to manifest itself in each vehicle.
21

22 285. On or about January 19, 2010, Toyota representatives including
23 Yoshimi Inaba, James E. Lentz, and Christopher Reynolds met with NHTSA at its
24 headquarters in Washington, DC. In the meeting, Toyota finally provided NHTSA
25 with field reports on the sticky pedal incidents. Toyota did not issue any safety
26

27
28 ⁵⁰ TOY-MDLID00041350.

1 advisories to United States consumers regarding the sticking pedal issue until
2 January 21, 2010, when it issued the sticky pedal recall. The recall involved
3 approximately 2.3 million Defective Vehicles.

4 286. On or about January 26, 2010, Toyota announced in a press release
5 issued from Torrance, California that it was voluntarily suspending sales of eight
6 models involved in the January 21, 2010 recall for sticking accelerator pedals,
7 including its top selling Camry and Corolla models. Group Vice President and
8 Toyota Division General Manager Bob Carter made clear that “[t]his action is
9 necessary until a remedy is finalized.” Toyota further announced that due to the
10 sales suspension, Toyota was expected to stop producing vehicles on several North
11 American production lines. Toyota did not resume sales of these vehicles until
12 February 5, 2010.

13 287. While Toyota executives were claiming the defect was due to pedal
14 entrapment dealers believed otherwise.⁵¹

15 I’m afraid that many of us in the dealer body feel
16 embarrassed and not a little ashamed regarding a
17 perception that we may have been used to faithfully
18 endorse the (apparently inaccurate) party line that the only
19 customer concerns have been as a result of pedal
20 entrapment. While I’m sure that this was never Toyota’s
21 intent, there is a palpable feeling somewhere between
22 disappointment and betrayal at the retail level. As you
23
24
25
26
27

28 ⁵¹ TOY-MDLID00015943.

1 know, this would be best addressed by a prompt, effective
2 cure for customer concerns.

3
4 The other thought is that it was not the Watergate break-in
5 that brought down President Nixon; it was the aftermath.

6 Please help us with your endorsement that all
7 communications be frank, complete, and 100% accurate.
8

9 288. Toyota continued to receive reports from qualified engineers opining
10 the abnormalities in the ECTS. For example, on January 28, 2009 a Professional
11 Engineer examined a 4Runner that:⁵²
12

13 According to the driver of the vehicle, she had driven the
14 4Runner earlier in the day of the incident. She stated that
15 when she started the vehicle, placed the gear selector lever
16 in the reverse and depressed the accelerator pedal, the
17 vehicle accelerated rearward in an uncontrolled manner.

18 The vehicle traveled down her driveway, crossed a road,
19 struck a stump and entered a stream. The vehicle came to
20 rest on its driver side. She exited the vehicle through the
21 sun roof. She stated that she had never had any drivability
22 issues with the 4Runner.
23

24 289. The report concluded:
25
26
27

28 ⁵² TOY-MDLID90053224.

1 Based on the foregoing observations and analysis, the
2 following are my opinions, to a reasonable degree of
3 engineering certainty, regarding the condition and
4 operation of the Toyota 4Runner.

5 * * *

6
7 Third, the voltages associated with the throttle position
8 sensor malfunction detection (w/ pedal depressed) and the
9 accelerator pedal position sensor for engine control (w/
10 pedal depressed) were not within specifications. The
11 voltage deviations indicate that the electronic throttle
12 control system featured abnormalities. The inability to
13 start the vehicle precluded testing the functional operation
14 of the system.
15

16 290. Toyota was careful to make certain it would be difficult to discover
17 what it knew about the SUA defect, which models were effected and which
18 managers were involved. Employees were instructed to disguise emails:
19

- 20 • When you send a mail to somebody outside the
21 company, drop cc to your boss.[]
22 Check the subject/text/attachment(*)
23 *Any emails from Quality Control Department are
24 basically “confidential.”
- 25 • Put “Secret” and “Don’t forward” in the beginning
26 of every email (including reply and forward.) []
- 27 • Do not include both project code and car names. []
28

- Attached documents (prepared by your department or other department) should be classified. []
- When you reply to emails, generally delete the tracking record and attachment. []

masato_kosugi@mta.mx.toyota.co.jp on 1/26/2010

20:13:39

291. On or about April 5, 2010, NHTSA announced that it was seeking a \$16.375 million civil penalty from TMC due to the Toyota Defendants' failure to appropriately inform NHTSA with regard to a potential defect in its vehicles stemming from TMC's knowledge of the sticking pedal defect. This sanction presented the largest financial penalty ever imposed on an automaker by the United States Government and was the largest fine permitted by law. Transportation Secretary Ray LaHood stated, "[b]y failing to report known safety problems as it is required to do under the law, Toyota put consumers at risk."

292. On or about April 19, 2010, TMC agreed to pay NHTSA's record \$16.375 million fine, and avoided any official findings of fact by NHTSA. TMC admits that it "could have done a better job of sharing relevant information within our [Toyota's] global operations and outside the company ..."

D. The Internal Death by SUA Chart

293. Throughout the years Toyota received reports covering various Toyota models detailing incidents involving deaths due to SUA. Belatedly, in February 10, 2010, Toyota assembled these into what is in effect an internal death by SUA chart:

MODELTX	YEARTXT	FAILDATE	CDESCR
SIENNA	2007	20070811	ON AUGUST 11, 2007, MY FAMILY EXPERIENCED A HEAD ON COLLISION. WE WERE DRIVING A 2007 TOYOTA SIENNA. MY HUSBAND WAS DRIVING AND DIED AT THE SCENE. THE INVESTIGATION NEVER FOUND ANY REASON FOR THE CAUSE OF THE ACCIDENT. MY HUSBAND CROSSED THE CENTER LINE WHILE GOING ROUND A SLIGHT CURVE. HE WAS 47, POOR WEATHER WAS NOT ISSUE. IF THE ACCELERATOR ON THE SIENNA MALFUNCTIONED AND DID NOT RESPOND, THAT COULD DEFINITELY BE A FACTOR. OUR VAN HAD LESS THAN 3000 MILES ON IT. WE PURCHASED IN MAY 11, 2007. THE AUTOPSY FOR MY HUSBAND CAME BACK NEGATIVE FOR ANY MEDICAL CONDITION CONCERN. PLEASE INVESTIGATE OUR ACCIDENT REPORT AND BE SURE THE SAFETY AND RELIABILITY OF SIENNAS IS SOUND.
GX470	2003	20090206	I WAS TRAVELING WEST ON A TWO LANE PAVED ROAD (SUTTON ROAD) NEAR SUTTON SCHOOL. WEATHER WAS SNOWING AND ROAD CONDITIONS SLIPPERY WHEN MY ACCERERATOR FAILED TO RETURN TO IDLE POSITION. I APPLIED BRAKES AS I WAS APPROACHING A VEHICLE IN FRONT OF ME TRAVELING IN THE SAME DIRECTION. THE ELECTRONIC STABILITY CONTROL FAILED TO MAINTAIN STRAIGHT DIRECTION AS PER DESIGN INTENT AND MANUALS. FRONT BEGAN SLIDING TO LEFT AND REAR OF VEHICLE BEGAN SLIDING TO RIGHT. I INCREASED BRAKE PRESSURE AND STEERED INTO TH SKID, TO THE RIGHT. I WAS ABLE TO MISS THE CONTACT WITH ANY OTHER VEHICLES AND OR DAMAGE ANY PROPERTY, BUT DID END UP SLIDING INTO A DITCH OFF OF THE ROAD. WITH THE IMPACT RESULTING IN THE DEATH OF MY SERVICE DOG. AS I AM HANDICAPPED. NO DAMAGE TO MY VEHICLE, BUT NO I AM VIRTUALLY IMMOBILE WITH THE LOSS IF MY DEAR SERVICE DOG.
PRIUS	2005	20091022	OUR SON WAS KILLED ON OCT 22ND IN A SINGLE CAR CRASH WHILE DRIVING A 2005 TOYOTA PRIUS(THE POLICE REPORT STATES THAT HE LOST CONTROL, JUMPED THE CURB AND DIED IN THE ENSUING CRASH) WHILE NEGOTIATING A CURVE WHILE ATTEMPTING TO ENTER THE FREEWAY IN TUCSON AZ. WE STRONGLY BELIEVE THAT THIS MAY HAVE BEEN CAUSED BY SUDDEN ACCELERATION AND OR BREAK PROBLEMS. I KNOW THIS IS AN OLDER MODEL, BUT IN LIGHT OF TOYOTA'S LIES AND COVERUPS TIME WILL ONLY TELL.
SCION TC	2007	20090811	2007 SCION TC SET ON CRUISE AT 70 MPH CRASHED INTO GUARDRAIL ON HIGHWAY. MY SON WAS DRIVING AND HE DOES NOT REMEMBER THE CAUSE OF THE ACCIDENT BUT STATE POLICE ACCIDENT RECONSTRUCTION CLAIM CAR HIT THE GUARDRAIL AT A SPEED IN EXCESS OF 100 MPH UPON CRASH. CRASH SEVERLY INJURED MY SON AND KILLED HIS CHILDHOOD FRIEND. TWO THINGS ARE KNOWN FOR CERTAIN, DRIVER CLAIMS CAR WAS ON CRUISE AND ACCIDENT REPORT STATES SPEED OVER 100 MPH. THE CRASHES ON THESE CARS ARE OVERLOOKED BECAUSE MOSTLY TEENAGERS AND YOUNG ADULTS ARE BUYING THEM AND OFFICIALS AND INSURANCE COMPANIES BLAME ACCIDENTS ON DRIVER INEXERPERIENCE.
4RUNNER	1992	19920303	A 1992 TOYOTA 4-RUNNER WAS PURCHASED AND WE ONLY HAD IT FOR TWO WEEKS. THE TRUCK WAS DRIVEN TO WEST VIRGINIA. THE NEXT DAY THE TRUCK SUDDENLY ACCELERATED AT A HIGH SPEED AND WHEN THE BRAKES WERE APPLIED IT WOULD NOT STOP. IT CRASHED AND FLIPPED OVER. MY HUSBAND DIED IN THAT TRUCK. THERE WAS A LAW SUITE BUT IT NEVER WENT TO COURT AFTER FIVE YEARS. MY LAWYERS GAVE UP. TOYOTA NEVER SETTLED WITH ME AND ONLY SAID IT WAS DRIVER ERROR. THE ENGINEER WHO WAS ON THE CASE SAID THERE WAS A DESIGN DEFECT BUT THEY COULD NOT PROVE IT. SEE ALSO ODI 10121117 *DSY *TR

MODELTX	YEARTXT	FAILDATE	CDESCR
HIGHLANDER	2008	20091130	TL* THE CONTACT'S SISTER OWNS A 2008 TOYOTA HIGHLANDER. THE CONTACT'S SISTER WAS DRIVING AND THE VEHICLE ACCELERATED ACROSS THE INTERSTATE, HIT AN EMBANKMENT AND THEN WAS HIT BY A TRUCK. THE VEHICLE BURNED AND THE DRIVER WAS KILLED AS A RESULT OF THE ACCIDENT. THE VEHICLE WAS DESTROYED BUT THERE WAS NO INVESTIGATION INTO THE CAUSE FOR THE ACCIDENT. THE CONTACT CALLED THE MANUFACTURER BUT WAS NOT ABLE TO GET IN TOUCH WITH ANY REPRESENTATIVES. THE CURRENT AND FAILURE MILEAGES WERE APPROXIMATELY 33,000.
TACOMA	2008	20100126	TOYOTA TACOMA 2008 PLEASE STUDY THIS ACCIDENT. IT MAY RELATE TO THE GAS PEDAL, SO LET TOYOTA KNOW TO RECALL THIS MODEL TOO SO TO PREVENT AN ANOTHER FATAL ACCIDENT LIKE MY BROTHER HAD. *TR
SOLARA	2004	20090928	ON SEPTEMBER 28, 2009 MY MOTHER WAS DRIVING HER 2004 TOYOTA SOLARA AND HAD AN ACCIDENT. THE CAR JUMPED THE CURB, HIT A TREE, A LAMP POST, AND CRASHED INTO A STONE SIGN. SHE WAS TAKEN TO THE HOSPITAL WHERE THEY FOUND A LARGE BRUISE ON HER ARM. THE DOCTORS SENT HER FOR A SCAN RIGHT AWAY, BUT SHE HAD A STROKE AND NEVER RECOVERED. SHE DIED FOUR DAYS LATER. I REALIZE THAT THE CURRENT TOYOTA ACCELERATOR RECALL DOES NOT INVOLVE THE SOLARA AT THIS TIME, BUT OUR FAMILY IS NOW SUSPICIOUS. A CAUSE OF MY MOTHER'S ACCIDENT HAS NOT BE DETERMINED. SHE DIED BEFORE THE POLICE WERE ABLE TO ASK HER ABOUT THE ACCIDENT. THE CAR IS STILL SMASHED UP AND HAS NOT BEEN REPAIRED. SHOULD WE INVESTIGATE THIS MATTER FURTHER? TW*
HIGHLANDER	2005	20091013	TOYOTA HIGHLANDER 2005. PETERBORO , NH. 11 AM. DRIVER WAS REPORTED TO PASS VEHICLE ON RIGHT IN BREAK DOWN LANE, THEN TRIED TO PASS ANOTHER CAR BY GOING INTO LEFT LANE AND HIT ONCOMING VEHICLE. FOUR PEOPLE KILLED. DRIVER WAS VERY EXPERIENCED --EXCELLENT SAFETY RECORD. I HAD BEEN IN HIS CAR WITH HIM HUNDREDS OF TIMES. VERY SAFE DRIVER --NO COWBOY. BELIEVE CAR HAD UNCONTROLLED ACCELERATION. *CN
CAMRY	2007	20080412	TL* THE CONTACT OWNED A 2007 TOYOTA CAMRY LE. WHILE DRIVING THE ACCELERATOR PEDAL BECAME ENTRAPPED BY THE FLOOR-MAT. AS A CONSEQUENCE HE CRASHED INTO ANOTHER VEHICLE. THE DRIVER OF THE OTHER VEHICLE WAS KILLED. BOTH VEHICLES CAUGHT ON FIRE. THE FAILURE AND CURRENT MILEAGES WERE UNKNOWN. THE VEHICLE IDENTIFICATION NUMBER WAS UNAVAILABLE.
IS250	2006	20090410	TL* THE CONTACT OWNS A 2006 LEXUS IS250. WHILE DRIVING THE VEHICLE RAPIDLY INCREASED ITS SPEED UP TO 90 MPH . HE ATTEMPTED TO REMOVE THE FLOOR- MAT FROM UNDER THE ACCELERATOR PEDAL. HOWEVER, THE VEHICLE VEERED OFF OF THE ROAD AND THEN INTO A DITCH. WHEN THE VEHICLE ROLLED OVER, ONE OCCUPANT WAS EJECTED FROM THE FRONT SEAT; SINCE HE WAS NOT WEARING A SEAT BELT. THE OTHER THREE PASSENGERS HAD BRUISES LACERATIONS, AND WERE HOSPITALIZED. THE VEHICLE WAS COMPLETELY DESTROYED. A POLICE REPORT WAS AVAILABLE. THE FAILURE MILEAGE WAS 24,000.

MODELTX	YEARTXT	FAILDATE	CDESCR
AVALON	2001	20070409	LET ME EXPLAIN FIRST, I CAN'T SUBSTANTIATE THE CLAIM I AM MAKING ABOUT THE POSSIBLE CAUSE OF THE ACCIDENT THAT KILLED MY WIFE WHEN DRIVING A 2001 TOYOTA AVALON. THE REASON THE ACCIDENT OCCURRED IS THAT SHE DID NOT STOP AT AN INTERSECTION CONTROLLED WITH A STOP SIGN. THE ACCIDENT OCCURRED IN CALLAHAN COUNTY, TEXAS AT THE INTERSECTION OF FM 1750 AND HIGHWAY 36 ON APRIL 9, 2007 AT APPROXIMATELY 8:30PM. SHE DROVE UNDER THE TRAILER OF AN 18 WHEELER, WAS KILLED INSTANTLY AND DRAGGED UNDER THE TRAILER FOR 800 TO 900 FT. IT TOOK THE ABILENE FIRE DEPARTMENTS EXPERTISE TO REMOVE HER BODY FROM THE WRECKAGE. THE LOCAL VOLUNTEER FIRE DEPARTMENTS DID NOT WANT TO ATTEMPT IT. THERE WERE NO SKID MARKS. SHE HAD DRIVEN THIS ROUTE COUNTLESS TIMES AND WAS AWARE OF THE STOP SIGN. I CHECKED CELL PHONE RECORDS AND THERE WAS NO EVIDENCE THAT SHE COULD HAVE BEEN ON THE PHONE. ADMITTEDLY SHE WAS UPSET. SHE WAS DRIVING FROM ABILENE TO MEXIA, TEXAS TO BE WITH HER ELDERLY MOTHER WHO WAS IN A DIABETIC COMA WHEN SHE LAST SPOKE TO SOMEONE. HOWEVER RAY ANN WAS A GOOD DRIVER. I CAN'T BELIEVE THAT SHE WAS SO DISTRACTED TO ALLOW THIS TO HAPPEN. IN LIGHT OF THE RECENT RECALL BY TOYOTA, I BELIEVE THAT HER AVALON SUDDENLY ACCELERATED OUT OF CONTROL. NO SKID MARKS WERE AT THE SCENE ONLY CUTOUTS IN THE PAYMENT THAT WERE CAUSED BY HER CAR AS IT WENT UNDER THE TRAILER. WHY NO SKID MARKS? AS SHOWN ON CONSUMER REPORT INTERNET VIDEO, THE BRAKES ARE NOT ABLE TO SLOW THE CAR DOWN AS IT IS ACCELERATING AND SKID MARKS WOULD NOT HAVE BEEN POSSIBLE. THERE IS NO OTHER EXPLANATION IN MY MIND AS TO HOW RAY ANN COULD HAVE MISSED THE STOP SIGN. THE CAR WAS OUT OF HER CONTROL AND IT KILLED HER. IF YOU WOULD LIKE TO HAVE THE VIN, PLEASE CONTACT ME. I WILL PULL IT OUT OF THE RECORDS I HAVE. THANK YOU FOR YOUR CONSIDERATION AND ANY RESPONSE. THIS IS SUCH A TRAGEDY THAT UNTIL THE RECALL LEFT ME WITHOUT ANY EXPLANATION THAT WAS BELIEVABLE. I NOW BELIEVE I KNOW WHAT HAPPENED. *TR
CAMRY	2005	20090804	TL* THE DRIVER OWNS A 2005 TOYOTA CAMRY. HER SON IN LAW, WHILE DRIVING, WAS KILLED IN A VEHICLE CRASH. THE POLICE REPORT STATES THAT THE VEHICLE WAS SPEEDING AND THAT THE DRIVER COULD NOT CONTROL THE VEHICLE. SHE FILED A COMPLAINT WITH TOYOTA MANUFACTURER REGARDING UNINTENDED VEHICLE ACCELERATION. THE FAILURE MILEAGE WAS 45,000. THE VIN NUMBER WAS UNKNOWN.
CAMRY	2007	20090527	HIGH SPEED COLLISION INVOLVING A 2007 TOYOTA CAMRY. DRIVER WAS FAMILIAR WITH ROAD AND WAS NOT KNOWN TO DRIVE AGGRESSIVELY OR SIGNIFICANTLY ABOVE SPEED LIMIT. TOXICOLOGY REPORTS CAME BACK NEGATIVE. DRIVER HAD BIPOLAR DISORDER AND WAS DRIVING SELF TO HOSPITAL, BUT THERE WAS NO INDICATION AT ALL OF SUICIDAL BEHAVIOR/INTENT. POLICE REPORT PUT RATE OF SPEED AT TIME OF COLLISION AT LEAST 85 MPH. CONVERSATIONS WITH INVESTIGATORS INDICATE THAT SEVERITY OF COLLISION INDICATES SPEED MAY HAVE BEEN 100MPH. POSTED SPEED WAS APPROXIMATELY 40MPH. *TR

MODELTX	YEARTXT	FAILDATE	CDESCR
ES350	2009	20090828	ON AUGUST 28, 2009, FOUR OCCUPANTS OF A 2009 LEXUS ES350 TRAGICALLY AND UNNECESSARILY DIED IN SANTEE, CALIFORNIA IN SAN DIEGO COUNTY FOLLOWING A HIGH SPEED LOSS OF CONTROL AND ROLLOVER EVENT. THE VEHICLE IN QUESTION WAS A LOANER CAR FROM BOB BAKER LEXUS IN EL CAJON, CALIFORNIA. DRIVER OF THE VEHICLE, 45, A 19 YEAR VETERAN OF THE CALIFORNIA HIGHWAY PATROL. THE DRIVER HAD OBTAINED THE VEHICLE THAT DAY AFTER DROPPING OFF HIS LEXUS FOR SERVICE. WITNESSES REPORT THAT THE OFFICER WAS MANEUVERING THE LEXUS IN AND OUT OF TRAFFIC AT HIGH RATES OF SPEED ON STATE ROUTE 125, HONKING HIS HORN WITH THE HAZARD LIGHTS ON, PRIOR TO THE HIGHWAY ENDING AT AN INTERSECTION. THE OFFICER ATTEMPTED TO NEGOTIATE A TURN BUT COULD NOT AVOID STRIKING ANOTHER VEHICLE AND LOSING CONTROL BECAUSE OF HIS HIGH RATE OF SPEED. THE VEHICLE LOST CONTROL, ROLLED SEVERAL TIMES, AND CAUGHT FIRE. ALL FOUR OCCUPANTS ARE REPORTED TO HAVE DIED ALMOST IMMEDIATELY. PRIOR TO ENTERING THE INTERSECTION, AN OCCUPANT OF THE VEHICLE CALLED 911 EMERGENCY TO REPORT THAT THE ACCELERATOR WAS STUCK. HE REPORTED THAT THE VEHICLE WAS TRAVELING 120 MILES PER HOUR AND THAT THEY WERE APPROACHING AN INTERSECTION. OCCUPANTS ARE HEARD TELLING EACH OTHER TO PRAY BEFORE A WOMAN SCREAMS AND THE CALL SUDDENLY ENDS. THE OFFICER(DRIVER OF THE VEHICLE, HIS WIFE, 45, AND THEIR 14 YEAR OLD DAUGHTER ALL DIED IN THE CRASH. THE WIFE'S BROTHER, 38, ALSO DIED. ON BEHALF OF THE SURVIVING FAMILY MEMBERS OF THE DECEDENTS, WE RESPECTFULLY REQUEST YOU TO INVESTIGATE WHY THIS LEXUS VEHICLE'S ACCELERATOR MALFUNCTIONED, AND WHY A HIGHLY-TRAINED OFFICER AND DRIVER LIKE THE OFFICER WAS UNABLE TO RE-GAIN CONTROL OF THE LEXUS VEHICLE AT ISSUE OR OTHERWISE AVOID CATASTROPHE. WE CURRENTLY ARE AWAITING ADDITIONAL FACTS SURROUNDING THE INCIDENT, AND THE MALFUNCTION OF THE LEXUS, BUT WILL SUPPLEMENT THIS COMPLAINT UPON RECEIPT. *TR UPDATED 12/01/09 *BF UPDATED 12/01/09
ES330	2006	20080826	TL*THE CONTACT OWNS A 2006 LEXUS ES330. WHILE MERGING INTO THE RIGHT LANE AT APPROXIMATELY 25 MPH, THE VEHICLE SUDDENLY ACCELERATED. THE CONTACT WAS UNABLE TO BRAKE AND STRUCK A PEDESTRIAN. THE PEDESTRIAN DIED DUE TO INJURIES. THE CONTACT ALSO REAR ENDED TWO OTHER VEHICLES AND DROVE THROUGH A FENCE. THE VEHICLE CAME TO A STOP WHEN IT CRASHED INTO A GUARD RAIL. THE MANUFACTURER STATED THAT THE CAUSE OF THE FAILURE COULD HAVE BEEN THE FLOORMATS. THE INSURANCE COMPANY CLAIMED THAT THE VEHICLE WAS DESTROYED. THE CONTACT RECEIVED INJURIES TO HER BACK, NECK, AND LEG. TWO OTHERS WERE ALSO INJURED. STATE POLICE REPORT NUMBER 5271887 WAS FILED. THE FAILURE AND CURRENT MILEAGES WERE 26,286. UPDATED 10/01/08. *LJ THE MANUFACTURER STATED THE FLOOR MATS MAY HAVE BECOME STUCK UNDER THE ACCELERATOR WHICH CAUSED THE VEHICLE TO ACCELERATE OUT OF CONTROL. UPDATED 10/08/08. *JB
TUNDRA	2007	20080220	TL*THE CONTACT OWNED A 2007 TOYOTA TUNDRA. WHILE THE CONTACT'S HUSBAND WAS DRIVING AT AN UNKNOWN SPEED, THE VEHICLE ACCELERATED BETWEEN APPROXIMATELY 80-100 MPH, CRASHED INTO A TREE AND THE DRIVER WAS KILLED. THE VEHICLE WAS DESTROYED. THE CONTACT BELIEVED THAT THE CRASH WAS RELATED TO THE RECALL ABOUT THE AFTERMARKET ALL WEATHER FLOOR MATS BECOMING STUCK AND CAUSING THE VEHICLE TO ACCELERATE. A POLICE REPORT WAS FILED. THE CURRENT AND FAILURE MILEAGES WERE APPROXIMATELY 35,000. UPDATED 03-11-08 *BF

MODELTX	YEARTXT	FAILDATE	CDESCR
CAMRY	2004	20040314	MY MOTHER AND FRIEND STARTED OUT FOR CHURCH, THE FRIEND HAD COME TO PICK HER UP WHEN THE 2004 TOYOTA CAMRY WITH LESS THAN 3000 MILES ON IT WAS HAVING DIFFICULTY SHIFTING INTO REVERSE, THEN WHEN SHE SHIFTED INTO DRIVE THE CAR ACCELERATED UNCONTROLLABLY EST SPEED ON 80 - 92 MILE A HOUR IN LESS THAN 250 FT WHEN THE CAR HIT A MOBILE HOME. THEY HIT SO HARD IT MOVED DOUBLE WIDE ALMOST A FOOT. KILLING MY MOTHER THE PASSENGER AND INJURY TO HER FRIEND THE DRIVER. NO AIR BAG DEPLOYED AND WHEN TOYOTA WAS CONTACTED THEY REFUSED TO SPECK TO US. ATTORNEYS HAVE SAID THAT TOYOTA IS SO BIG, NOT COST AFFECTIVE....SO I WATCH AND IN TWO YEARS THERE ARE MANY MANY MORE NOW....HOW MANY MORE HAVE TO DIE BEFORE SOMETHING IS DONE. SEE ALSO 10074472. *DSY *NM
AVALON	2003	20041109	MY MOTHER-IN-LAW WHO ALWAYS WORE HER SEAT BELT WAS DRIVING HOME AT NIGHT AND SOMEHOW RAN OFF THE ROAD HIT A LITTLE CHERRY TREE AND WAS THROWN FROM HER CAR & KILLED HER. THE SIDE NOR THE FRONT AIR BAGS WENT OFF. AND APPARENTLY THE SEAT BELTS FAILED TOO. THE HIGHWAY PARTROL CAN'T FIGURE OUT WHAT HAPPENED.*AK
CAMRY	2003	20040315	WHILE IN A PARKING LOT AND BACKING OUT OF A PARKING SPACE VEHICLE ACCELERATED SUDDENLY HITTING A PEDESTRIAN. *AK ONE PERSON WAS INJURED AND ONE PERSON WAS KILLED IN THIS ACCIDENT. THE CONSUMER REFUSED TO DRIVE THE VEHICLE AFTER THIS INCIDENT AND RETURNED THE VEHICLE TO THE DEALER. *NM
CAMRY	2004	20040314	DIFFICULTY SHIFTING FROM PARK TO REVERSE, THEN UPON SHIFTING INTO DRIVE THE CAR ACCELERATED UNCONTROLLABLY, WOULD NOT STOP, COLLIDED WITH A MOBILE HOME, AIR BAGS DID NOT DEPLOY, RESULTING IN THE DEATH OF ONE PASSENGER AND INJURY OF DRIVER *LA SEE ALSO VOQ 10171110. *DSY.
CAMRY	2002	20030904	MAKIA CAFUA, DRIVING HER 2002 TOYOTA CAMRY, VIN 4TIE32K92U636868, WAS ENTERING I-93 AT EXIT 39 AT 5:30 IN THE MORNING WHEN HER CAR SUDDENLY SHOT ACROSS THREE LANES OF TRAVEL AND WAS HIT, BROAD SIDE, BY ANOTHER VEHICLE TRAVELING IN THE HIGH SPEED (3RD) LANE. TRAFFIC AT THE TIME OF THE ACCIDENT WAS LIGHT. IT IS BELIEVED THAT THE CAMRY EXPERIENCED AN UN-COMMANDED ACCELERATION CAUSING MRS. CAFUA TO LOSE CONTROL RESULTING IN THE ACCIDENT AND HER DEATH. THE CAMRY HAS BEEN STORED SINCE THE ACCIDENT AND NO CHANGES HAVE BEEN MADE TO ITS POST ACCIDENT CONDITION. VEHICLE IS AVAILABLE FOR INPECTION/TESTING BY NHTSA. *AK
CAMRY	2002	20040122	WITNESSES SAW MY PARENTS VEHICLE (A 2002 TOYOTA CAMRY) COMING TO A STOP AND THEN SUDDENLY ACCELERATE.*AK
CAMRY	2003	20040316	WHEN COMING OUT OF A PARKING LOT ACCELERATOR STUCK, CAUSING THE VEHICLE TO ACCELERATE OUT OF CONTROL. VEHICLE GRAZED ANOTHER VEHICLE, WENT ACROSS A STREET, GRAZED A BUILDING, AND DROVE STRAIGHT INTO ANOTHER BUILDING. DRIVER WAS CONSCIOUS WHEN PARAMEDIC ARRIVED. THEY FOUND THE DRIVER WITH BOTH FEET STILL ON THE BRAKE PEDAL. DRIVER WAS TRANSPORTED TO THE HOSPITAL, AND LATER DIED DUE TO FATAL INJURIES FROM THE CRASH. THE INSURANCE COMPANY PRESERVED THE VEHICLE AS EVIDENCE. THE POLICE REPORT STATED THE CRASH WAS DUE TO A MECHANICAL DEFECT. *AK *NM

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294. The gravity of the SUA defect and Toyota's knowledge of the defect is evident from the descriptions provided by vehicle owners. Attached as Exhibit A is

⁵³ TOY-MDLID00017271

1 a summary of customer SUA complaints described by Toyota as complaints taken
2 just from the Field Reports database where the floor mat or pedal was not implicated.

3 **E. Toyota Continues to Deny Electronic Throttle Defect Despite Post-Recall**
4 **Complaints**

5 295. Toyota and NHTSA continued to receive complaints of unintended
6 acceleration by vehicles not involved in the recalls or by vehicles which have
7 participated in the recalls and been “fixed.”

8 296. On February 22, 2010, Toyota conducted a “webinar” purporting to
9 address the various safety concerns plaguing Toyota and Lexus vehicles. While
10 Toyota had previously claimed that the braking problems in the Prius and Lexus ES
11 250h were unrelated to the unintended acceleration problem, in the webinar Toyota
12 admitted they were linked by suggesting that the ETCS-i system facilitates electronic
13 braking control (among the other “advantages” Toyota touted in regard to the
14 ETCS-i system).

15 297. On March 2, 2010, TMC Executive Vice President, Takeshi
16 Uchiyamada, Executive Vice President, submitted prepared testimony to the Senate
17 Committee on Commerce, Science and Transportation. Mr. Uchiyamada’s
18 testimony purported that the ETCS-i system is tested “extensively both in the design
19 phase and after it is developed to ensure that there is no possibility of ‘sudden
20 unintended acceleration.’” In reality, Toyota relies heavily upon its component
21 suppliers to perform such testing. Toyota’s suppliers typically complete Toyota’s
22 parts level testing independently. Toyota performance standards apply only to Tier 1
23 suppliers. Toyota does not have any clearly written rules or regulations about who
24 must conform to Toyota’s standards below its Tier 1 suppliers. For instance, while
25
26
27
28

1 Toyota may impose testing standards on CTS, the supplier of the sticky accelerator
2 pedals at issue, when questioned before Congress, Toyota engineers could not testify
3 that Toyota imposed similar controls on the manufacturers of the sensors and circuit
4 board that CTS utilizes in its pedal. Moreover, Toyota's engineers admitted that
5 "there is no particular or special testing that would directly prove that there is no
6 unintended acceleration."
7

8 298. On March 5, 2010, Congressmen Henry A. Waxman and Bart T.
9 Stupak, Chairmen of the House Subcommittee on Oversight and Investigation, wrote
10 a letter to James E. Lentz, President and Chief Operations Officer of Toyota Motor
11 Sales U.S.A., Inc., stating, among other things:

12 We do not understand the basis for Toyota's repeated
13 assertions that it is "confident" there are no electronic
14 defects contributing to incidents of sudden acceleration.
15 We wrote you on February 2, 2010, to request "all analyses
16 or documents that substantiate" Toyota's claim that
17 electronic malfunctions are not causing sudden unintended
18 acceleration. The documents that Toyota provided in
19 response to this request did not provide convincing
20 substantiation. We explained our concerns about the
21 failure of Toyota to substantiate its assertions in our letter
22 to you in February 22, 2010.
23
24

25 After we sent our letter on February 22, Toyota provided a
26 few additional documents to the Committee early in the
27
28

1 morning on the day of the hearing. Several of these
2 documents were written in Japanese. While some of these
3 documents appear to contain preliminary fault analyses that
4 could be used in planning a rigorous study of potential
5 cause of sudden unintended acceleration, not one of them
6 suggested that such a rigorous study had taken place. As
7 we explained in our February 22 letter, the only document
8 Toyota has provided to the Committee that claims to study
9 the phenomenon of sudden unintended acceleration in a
10 comprehensive way, is an interim report from the
11 consulting firm Exponent, Inc. This report has serious
12 deficiencies, as we explained in our February 22 letter.

15 299. Toyota has continued to maintain that there are no problems with its
16 ETCS-i in public and in depositions, but has provided little or no support for these
17 statements. For example, when asked why Toyota believed there were no problems
18 with the ETCS-i, its technical analysis manager testified falsely, “[t]his basis for
19 those statements would be when we have been asked to investigate any customer
20 concern involving unintended acceleration, we have never found anything related to
21 the electric control system that could be the cause of those matters.”

23 **F. Over 70% of Unintended Acceleration Events Are in Vehicles Not**
24 **Covered by the Recall**

25 300. Based on a review of 75,000 documents, the House Committee on
26 Energy and Commerce had three significant concerns with Toyota’s recalls and
27 explanations:
28

1 First, the documents appear to show that Toyota
2 consistently dismissed the possibility that electronic
3 failures could be responsible for incidents of sudden
4 unintended acceleration. Since 2001, when Toyota first
5 began installing electronic throttle controls on vehicles,
6 Toyota has received thousands of consumer complaints of
7 sudden unintended acceleration. In June 2004, the
8 National Highway Traffic Safety Administration (NHTSA)
9 sent Toyota a chart showing that Toyota Camrys with
10 electronic throttle controls had over 400% more 'vehicle
11 speed' complaints than Camrys with manual controls. Yet,
12 despite these warnings, Toyota appears to have conducted
13 no systematic investigation into whether electronic defects
14 could lead to sudden unintended acceleration.
15

16
17 301. This concern is significant because it appears from 2004 to 2009;
18 Toyota was selling cars without knowledge of what caused the defect or disclosure
19 of the defect.
20

21 302. Next, the Committee rejected tests submitted by Toyota that were
22 conducted at the request of Toyota's litigation counsel, Bowman and Brooke, LLP:
23

24 Second, the one report that Toyota has produced that
25 purports to test and analyze potential electronic causes of
26 sudden unintended acceleration was initiated just two
27 months ago and appears to have serious flaws. This report
28 was prepared for Toyota by the consulting firm Exponent,

1 Inc. at the request of Toyota's defense counsel, Bowman
2 and Brooke, LLP. Michael Pecht, a professor of
3 mechanical engineering at the University of Maryland, and
4 director of the University's Center for Advanced Life
5 Cycle Engineering (CALCE), told the Committee that
6 Exponent 'did not conduct a fault tree analysis, a failure
7 modes and effects analysis ... or provide any other
8 scientific or rigorous study to describe all the various
9 potential ways in which a sudden acceleration event could
10 be trigger' 'only to have focused on some simple and
11 obvious failure causes'; used 'extremely small sample
12 sizes'; and as a result produced a report that "I would not
13 consider ... of value ... in getting to the root causes of
14 sudden acceleration in Defective Vehicles.'

17 303. Again, the concern over the Exponent Bowman and Brooke report
18 highlights (a) that Toyota had no credible prior report or analysis of SUA; (b) that
19 Toyota had been selling vehicles without disclosure of the defect; (c) Toyota's
20 inability to understand the basis for the defect; and (d) its failure to provide a fail-
21 safe to prevent unintended acceleration.
22

23 304. The Committee then addressed Toyota's lack of truthfulness in its
24 statements and rejected the notion that floor mats or pedals were the sole cause of the
25 problem:
26

27 Third, Toyota's public statements about the adequacy of its
28 recent recalls appear to be misleading. In a February 1,

1 2010, appearance on the *Today* show, you stated that
2 Toyota has “studied the events of unintended acceleration,
3 and [it] is quite clear that it has come down to two different
4 issues,” entrapment of accelerator pedals in floor mats and
5 sticky accelerator pedals. In an appearance the same day
6 on CNBC you repeated this claim and reported that Toyota
7 is “very confident that the fix in place is going to stop
8 what’s going on.”
9

10
11 The documents provided to the Committee appear to
12 undermine these public claims. We wrote to you on
13 February 2, 2010, to request any analyses by Toyota that
14 show sticky pedals can cause sudden unintended
15 acceleration. Toyota did not produce any such analyses.
16 To the contrary, Toyota’s counsel informed the Committee
17 on February 5 that a sticky pedal “typically ... does not
18 translate into a sudden, high-speed acceleration event.”
19 Moreover, our review of the consumer complaints
20 produced by Toyota shows that in cases reported to the
21 company’s telephone complaint lines, Toyota personnel
22 identified pedals or floor mats as the cause of only 16% of
23 the sudden unintended acceleration incident reports.
24 Approximately 70% of the sudden unintended acceleration
25 events in Toyota’s own customer call database involved
26
27
28

1 vehicles that are not subject to the 2009 and 2010 floor mat
2 and “sticky pedal” recalls.

3 305. Toyota’s denials of an ETCS defect persisted even when independent
4 professional engineers concluded in February 2009, that a SUA incident in
5 Tennessee was caused by deviations with ETCS.⁵⁴
6

7 306. One reason why Toyota lacks sufficient test data on the reliability of
8 ETCS, and had to rely on a report belatedly ginned up by Exponent Bowman &
9 Brooke, is the overall slip at Toyota in its attention to quality control. Toyota has
10 sacrificed safety for speed.

11 307. In the last ten years, the culture has changed. Now, as acknowledged by
12 Toyota, the emphasis is on fast production. While production and production goals
13 have increased, the number of trained quality control employees has decreased.
14 Experienced assembly and quality workers have been replaced with over a thousand
15 inexperienced and relatively untrained temporary workers.
16

17 308. The result has been a significant increase in quality control problems
18 per vehicle. Defects are ignored in the interest of speed and quantity of production.
19 Defects that in the past would have resulted in stoppage of the line are overlooked.
20 Quality control employees have been often told by supervisors that when they find a
21 defect they are not to record it but are to look for other cars that do not have the
22 defect, and only then report the original defective car as an isolated incident that does
23 not require a recall. Quality control employees are given goals that set an upper limit
24 on the number of defects they are to report.
25
26

27
28 ⁵⁴ TOY-MDLID90053223.

G. Toyota Identifies Many Root Causes of SUA Confirming the Need for Brake Override

309. Toyota received numerous Field Technical Reports (“FTR”) where SUA events were confirmed and where the cause was not a mat or “sticky” pedal. For example, on December 9, 2009, a FTR was issued concerning a 2009 Camry. The customer reported RPM surge of up to 1200 RPM. The FTR confirmed the UA event and the condition could be replicated. To fix the problem in this instance Toyota replaced the “Head SUB-ASSY, Cylinder.”

310. In May 2005, a customer complained that after releasing the throttle engine speed remained at 5,000 RPM. A dealer could not replicate the problem but when the dealer reinstalled the throttle body he replicated the condition and confirmed it was not caused by a floor mat. Toyota replaced the throttle (Part 222102 1020).⁵⁵

311. A customer driving a 2008 Corolla reported the engine accelerated up to 60 mph. On inspection the “condition was duplicated” without triggering a DTC Code. Toyota replaced the ECU. (Part #8966102M92.)

312. In 2007, after a SUA event that caused the vehicle to accelerate up to 70 mph, the dealer found a faulty pedal sensor. Case 200704030437.

313. On December 12, 2008, an Early Warning Report was generated by Toyota de Brasil regarding a Corolla. The report noted that this is a, “new Corolla which presented a spontaneous engine speed acceleration. This is the first case and it is a dangerous problem because it can cause a serious accident, putting the life of the

⁵⁵ TOY-MDLID002444.

1 customer and other people at risk.” The report noted that “this incident resulted in a
2 light collision.” The dealer confirmed this was not a carpet or floor mat problem.

3 314. In one FTR Toyota found the SUA was caused by the accelerator pedal
4 position sensor and despite engine idles at 4000 RPM there are no “diagnostic
5 trouble codes.”
6

7 315. Toyota recognized that SUA can be triggered by a malfunction from
8 many different failures. In a 2004 “check sheet” it identified that the accelerator
9 pedal, cable, cruise control, air valve, throttle body, accelerator and throttle sensor,
10 EFI computer, wire harness and cruise control all were possible factors.

11 **H. Toyota Uniformly Rejected Claims, Made No Disclosures to Consumers**
12 **and Affirmatively Misled Consumers**

13 316. When a customer reports a SUA event, Toyota uniformly rejects any
14 claim of any defect and fails to disclose the existence of hundreds if not thousands of
15 similar SUA claims.
16

17 317. Typical of such a response is the following letter sent from TMS’
18 California offices:

19 Re: Date of Loss: February 2, 2009
20 Vehicle: 2007 Lexus ES 350
21 VIN: ...
22

23
24 Dear _____:

25
26 This letter is in response to your communication with
27 Lexus Customer Satisfaction. Toyota Motor Sales, USA,
28

1 Inc. ("TMS") has reviewed your claim and conducted a
2 technical inspection of your vehicle.

3
4 You reported that while driving the vehicle on the interstate
5 it accelerated on its own and you were unable to stop it for
6 nearly two miles when it finally slowed after a concerted
7 effort on your part. You believe that this was due to a
8 defect in your vehicle.
9

10
11 The inspection of your vehicle revealed no evidence of any
12 vehicle defects or malfunction. The throttle assembly and
13 accelerator pedal were operating as designed, with no
14 binding or sticking of any of the components. The brakes
15 showed signs of excessive wear which is consistent with
16 what you described happened to you.
17
18

19
20 The inspection also revealed that the floor mat was in a
21 position where it could interfere with the operation and
22 travel of the accelerator pedal. When the vehicle was taken
23 in to the dealership, the floor mat retaining clips were not
24 properly secured which allowed the floor mat to move out
25 of position. While we understand that you feel the floor
26 mat was not the problem, the evidence revealed during our
27 inspection showed otherwise.
28

1
2 We are very sorry about to learn of this unfortunate
3 incident, however, our inspection of your vehicle found
4 that the incident was not due to any sort of manufacturing
5 or design defect, and we are unable to offer additional
6 assistance.
7

8
9 Thank you for allowing us the opportunity to address your
10 concerns.
11

12
13 Very truly yours,

14
15 Troy Higa

16 Claims Administrator⁵⁶

17 318. One 2007 Lexus ES350 owner reported that she had a SUA event that
18 was not caused by floor mats (as there was no floor mat on the drivers' side) and it
19 was not caused by pressing the gas instead of the brake. In a detailed e-mail to
20 Toyota in October 2009, she described how she had dropped her daughter off one
21 evening, just as she normally did five times a week. As usual, she backed into the
22 neighbor's driveway. Her daughter and her son-in-law were watching her. Her
23 friend was in the passenger seat. All of a sudden the Lexus began to race out of
24
25
26
27

28 ⁵⁶ TOY-MDLID00199764.

1 control. She tried unsuccessfully to brake, but the car kept accelerating until it
2 reached speeds up to 90 miles an hour.

3 319. The Lexus hit several curbs, cracking and lifting the concrete. It was
4 travelling so fast that the passenger side door flew open and smashed against the
5 front of the car. She told Toyota that the only thing that saved their lives was a
6 concrete wall into which the car smashed and finally came to a halt.
7

8 320. The driver insisted that she was healthy and active, had good reflexes
9 and that she did not wear glasses or contacts. She then directly asked Toyota a
10 number of questions like how she could have kept her foot on the accelerator pedal
11 as she and her passenger were thrown about the interior of the car, only being held in
12 place by the seat belts and how could she have accelerated enough in a small parking
13 turn about to reach a speed that the car broke concrete.
14

15 321. Toyota responded to this customer by claiming the vehicle was “in
16 proper working order free of any type of mechanical defect.”⁵⁷ Toyota failed to
17 address the points raised by the SUA victim or to interview witnesses to verify her
18 account.
19

20 322. Even where a consumer had a professional engineer conclude that the
21 ETCS system was at fault, Toyota through a TMS claims manager in Torrance,
22 California, informed the consumer “there have been no confirmed or documented
23 reports or findings of any type of computer malfunctions related to the
24
25
26
27
28

⁵⁷ TOY-MDLID90011084.

1 brake/acceleration or electrical systems.”⁵⁸ It was Toyota’s standard practice to issue
2 uniform denials like that above from its claims manager in Torrance.

3 323. Such letters of denial were sent despite instances where police officers
4 found “physical evidence at the scene suggesting that vehicle #1 was continually
5 accelerating throughout the incident.” The officer in this incident noted the impact
6 caused the driver to “shift violently in her seat. This officer feels it is unlikely she
7 would have been able to manually accelerate throughout the event.”⁵⁹

9 324. To make matters worse a TMS manager from Torrance falsely stated on
10 repeated occasions that “the brakes will always override the throttle.”⁶⁰ This was a
11 flat-out lie as Toyota did not have a brake-override until 2010, and in most vehicles,
12 there is no such override.

14 **I. Continuing Warranties and Misrepresentations**

15 325. On November 25, 2009, Toyota falsely represented and warranted that
16 floor mats were the cause of SUA. In print media and in statements made to Toyota
17 dealers for dissemination to new vehicle buyers, Toyota falsely represented that
18 “Toyota vehicles are among the safest on the road today,” that there was no problem
19 with ETCS and that ETCS has been “evaluated numerous times.”

21 326. On November 2, 2009, Toyota announced that “no defect exists in
22 vehicles in which the driver’s floor mat is compatible with the vehicle and properly
23 secured.”⁶¹ Toyota further represented and warranted falsely that:

25 ⁵⁸ TOY-MDLID90054928.

26 ⁵⁹ TOY-MDLID90053562.

27 ⁶⁰ TOY-MDLID90059533.

28 ⁶¹ TOY-MDLID00008630.

1 The question of unintended acceleration involving Toyota
2 and Lexus vehicles has been repeatedly and thoroughly
3 investigated by NHTSA, without any finding of defect
4 other than the risk from an unsecured or incompatible
5 driver's floor mat;
6
7 Toyota takes public safety seriously. We believe our
8 vehicles are among the safest on the road. Our engineers
9 are working hard to develop an effective remedy that can
10 help prevent floor mat interference with the pedal. As soon
11 as it is ready, we will notify owners of the relevant models
12 to bring their vehicle to a dealer for the necessary
13 modification at no charge.
14

15 **J. Summary of the Defects in Defective Vehicles**

16 327. Vehicles with ETCS manufactured, marketed, sold and/or distributed by
17 Toyota and its affiliated companies suffer from the same overarching defect, in that,
18 they are vulnerable to incidents of sudden unintended acceleration ("SUA"),
19 including surges, lurching, revving engines, and other instances of unintended
20 acceleration captured as part of the more than 39,000 complaints to NHTSA and the
21 100,000 complaints received by Toyota. Regardless of the many root causes which
22 create this overarching defect, an effective brake-override system would serve as a
23 fail-safe design feature to prevent and/or minimize the risk of injury, harm or
24 damage to Toyota vehicle owners or their occupants from SUA events.
25
26

27 328. In addition to the lack of an effective brake-override system, there are
28 other specific defects in the Subject Vehicles that cause and/or contribute to the

1 overarching defect of SUA, including, but not limited to, defective pedals and poorly
2 designed floor mats, and there are design defects in the Subject Vehicles that caused,
3 contributed to, and/or failed to prevent SUA events, including the following: (1) an
4 inadequate fault detection system that is not robust enough to anticipate foreseeable
5 unwanted outcomes, including SUA; (2) the ETCS and its components are highly
6 susceptible to malfunction caused by various electronic failures, including, but not
7 limited to, short circuits, software glitches, and electromagnetic interference from
8 sources outside the vehicle; and (3) there was a failure to warn consumers as to how
9 to properly push and hold buttons of shift into neutral in order to stop SUA events
10 once the aforementioned defects had set the SUA events in motion.
11

12 329. These defects are further set forth below:
13

14 **1. Electronics Issues:**

15 Defects in the Subject Vehicles' electronic system which can and sometimes
16 do cause SUA include, but are not limited to:

17 a. The unwarranted and improper safety-critical reliance on
18 electronic engine control and braking systems, including, but not limited to, the
19 ETCS, which lacks a hardware redundant fault tolerant design;
20

21 b. Unwarranted and improper safety-critical reliance on analog
22 sensor inputs from two similar analog sensors in A) the throttle body assembly, and
23 B) the accelerator pedal assembly, which are subject to failure in various modes;
24

25 c. Unwarranted and improper safety-critical reliance on software
26 running in a single CPU within the vehicle electronic system, which is subject to
27 failure in various modes;
28

1 d. Unwarranted and improper safety-critical reliance on individual
2 hardware components used in the vehicle electronic system;

3 e. The susceptibility of the ETCS-i (particularly the wiring
4 harnesses connected to the accelerator pedal position sensors and the throttle position
5 sensors) to currents generated by radio frequency (RF) interference, combined with
6 an improper system for detecting and filtering RF currents;

7 f. The susceptibility of the ETCS-i (particularly the accelerator
8 pedal position sensors) to drops in supply voltage which, in turn, sometimes cause
9 sensor outputs consistent with a request by the driver to fully open the throttle;
10

11 g. The susceptibility of the ETCS-i (particularly the wiring
12 harnesses) to various shorts and faults, including resistive faults which, in turn,
13 sometimes cause sensor outputs consistent with a request by the driver to fully open
14 the throttle;
15

16 h. The failure to design, assemble and manufacture the ETCS-i
17 wiring harnesses in such a way as to prevent mechanical and environmental stresses
18 from causing various shorts and faults, including resistive faults which, in turn,
19 sometimes cause sensor outputs consistent with a request by the driver to fully open
20 the throttle;
21

22 i. The safety critical reliance on a purported fault detection system
23 that does not always generate and/or recognize faults in the vehicle electronic system
24 as they occur;

25 j. The inability of the software running within the ETCS-i to
26 properly self-calibrate when certain changes are detected;
27
28

1 k. The failure to design and include an appropriate EDR system
2 which properly records the position of the accelerator, brake, and throttle assembly
3 in order to allow proper examination of SUA events; and

4 l. The failure to include properly redundant systems with the ability
5 to cross-check bus reported accelerator and throttle positions with “actual sensor
6 data.”
7

8 **2. Mechanical Issues:**

9 Upon information and belief, certain mechanical defects in the Subject
10 Vehicles which can and sometimes do cause SUA include, but are not limited to:

11 a. The propensity for mechanical involvement and interference
12 between the accelerator pedal and the Subject Vehicles’ floor mats which can cause
13 the pedal to become stuck and remain depressed, keeping the throttle open despite
14 the operator’s application of the brake pedal, resulting in unintended acceleration;
15

16 b. Mechanical resistance that can cause the accelerator pedal to
17 become stuck in a fully or partially depressed position and to fail to return to its idle
18 position (referred by Toyota as a “sticky pedal”), resulting in unintended
19 acceleration;
20

21 c. Floor mat interference in all Toyota vehicles, recognized as early
22 as 2000 when Toyota recalled 1999-2000 model years Lexus LS 200 for SUA-floor
23 mat issues in the UK and again in 2007 when internally Toyota recognized floor
24 mats could be an issue in all vehicles⁶²;
25
26
27

28 ⁶² TOY-MDLID00002839.

1 d. Mechanical resistance which can cause the throttle body or
2 throttle plate to become stuck in a fully or partially open position resulting in
3 unintended acceleration; and

4 e. The gap between pedals is 20mm smaller on certain models
5 including but not limited to the RAV4 and Venza models, which contributed to
6 UA.⁶³

7
8 **3. The lack of an appropriate fail-safe:**

9 Toyota was aware the SUA events were caused by any of the above in a given
10 Defective Vehicle, but Toyota could not predict which of the faults listed above
11 caused a SUA event in any given vehicle. Toyota could not identify the root cause
12 of most SUA events. This made it critically important for Toyota to have an
13 adequate fail-safe. The Defective Toyotas did not have an adequate fail-safe due to:

14 a. The unwarranted and improper reliance on safety-critical but
15 untested or improperly tested “failsafe strategies” ostensibly designed to detect faults
16 in the vehicle electronic systems and prevent those faults from causing SUA. These
17 “failsafe strategies” can and sometimes do fail to recognize fault conditions which, if
18 left unchecked, result in unintended acceleration and record no direct evidence of the
19 fault that initially triggered the unintended acceleration event;
20

21 b. The lack of a proper “brake-override system” or other “fail-safe”
22 logic that would close the throttle while allowing the brakes to be applied in the
23 event the vehicles’ electronic systems received commands to open the throttle and
24 apply the brakes simultaneously;
25
26

27
28

⁶³ 41201T000.

1 c. The lack of a hardware-redundant fault tolerant electronic engine
2 control and braking system such as those employed by other vehicle manufacturers;

3 d. The lack of enough memory in the computer systems of certain
4 models to accommodate a brake-override system;

5 e. The lack of a proper ignition shut off in the event of a SUA event.
6 NHTSA identified this as a problem as early as August 2007 when it notified Toyota
7 that it was considering requiring a public service announcement to inform the public
8 “how to shut off the vehicle with the push button start,” meaning consumers did not
9 understand that it takes three seconds for the shut off to occur. Toyota was not only
10 aware of the problem it also failed to implement a kill switch;

11 f. The lack of a proper fault detection system that would recognize a
12 SUA event, or surge, or rpm run up beyond the maximum design tolerance and
13 respond by shutting down the throttle; and
14

15 g. The lack of an appropriate layout in the transmission system. In
16 many of the vehicles the shift system is confusing and results in drivers experiencing
17 an SUA event mistakenly placing the transmission in “D” when they thought they
18 were placing the transmission in “N.”
19
20

21 **4. Failure to appropriately test and validate the vehicle systems:**

22 a. An inability to identify the root cause for SUA. As alleged
23 above, Toyota has been aware since 2002 that its vehicles with ETCS have the
24 potential for SUA or “surging” at a rate that exceeds that in manually controlled
25 vehicles. Toyota has been unable to find the root cause of the problem. In a 2002
26 Toyota Field Technical Report, Toyota acknowledged that “[t]he root cause for
27 ‘surging’ remains unknown” and thus “[n]o known remedy exists for the ‘surging’
28

1 condition at this time.”⁶⁴ In 2010, Toyota still had not tested its ETCS, as it had to
2 hire Exponent to answer Congress’ inquiry over what proof Toyota had to show its
3 ETCS did not cause SUA. Congressman Waxman observed:

4 The results of our investigation raise serious questions.
5 Toyota has repeatedly told the public that it has conducted
6 extensive testing of its vehicles for electronic defects. We
7 can find no basis for these assertions. Toyota’s assertions
8 may be good public relations, but they don’t appear to be
9 true.
10

11 b. The faults and defects in Toyota’s safety critical vehicle
12 electronic systems described above show that Toyota has not properly tested or
13 validated these systems individually or as a whole; and
14

15 c. Moreover, Toyota has failed to verify that all electronic vehicle
16 systems capable of requesting torque are robust enough, and contain sufficient
17 redundancies to prevent SUA events.
18

19 **K. Toyota Belatedly Installs a Brake-Override as a “Confidence” Booster**

20 330. Toyota began facing complaints of runaway cars years ago, but the
21 company did not install “brake-override” systems in those vehicles, even as several
22 other automakers deployed the technology to address such malfunctions.

23 331. The brake-override systems allow a driver to stop a car with the
24 footbrake even if the accelerator is depressed and the vehicle is running at full
25

26
27

28 ⁶⁴ TOY-MDLID00062906.

1 throttle. The systems are an outgrowth of new electronics in cars, specifically in
2 engine control.

3 332. "If the brake and the accelerator are in an argument, the brake wins," a
4 spokesman at Chrysler said in describing the systems, which it began installing in
5 2003.
6

7 333. Shockingly, given the potential gravity of SUA events, internal
8 documents reveal Toyota knew it needed a brake-override years earlier:⁶⁵

9 **Subject:** Important information: America ES350
10 article...addition #2

11 **From:** Koji Sakakibara@toyota.com

12 **Date:** Tue. 1 Sep 2009 16.16.01 -0700

13 **To:** yoshioka@mail.tec.toyota.co.jp. Shunsuka Noguchi

14 syun@nano.tec.toyota.co.jp.

15 rkitsura@mail.tec.toyota.co.jp.

16 Kako kako@email.tec.toyota.co.jp>

17 **cc:** Kato maktoh@mail.tec.toyota.co.jp,

18 Hirokazu.Sakamoto@toyota.com,

19 Koji_Takara@toyota.com,

20 Keiichi_Fukushima@toyota.com,

21 washino@mail.tec.toyota.co.jp,

22 jamagush@earth.tec.toyota.co.jp, r-

23 Kawamu@earth.tec.toyota.co.jp,
24
25
26
27

28 ⁶⁵ TOY-MDLID00041130T-0001.

1 y_yamai@email.tec.toyota.cjp. Kanamori
2 kanamori@earth.tec.toyota.cojp,
3 ssakamt@earth.tec.toyota.cojp,
4 joji@giga.tec.toyota.cojp
5

6
7 To all concerned staff,
8

9 Thank you for your continued business. I am Sakakibara
10 from TEC-2Gr, COE-LA.
11

12 - The following information has been received from TMS-
13 POSS Public Affairs Group regarding the above (America
14 ES350 article...addition #2). (Please see photos at the
15 bottom of this mail.)
16

17
18 - During the floor mat sticking issue of 2007, TMS
19 suggested that there should be “a fail safe option similar to
20 that used by other companies to prevent unintended
21 acceleration.” I remember being told by the accelerator
22 pedal section Project General Manager at the time (Mr. M)
23 that “This kind of system will be investigated by Toyota,
24 not by Body Engineering Div.” Also, that information
25 concerning the sequential inclusion of a fail safe system
26 would be given by Toyota to NHTSA when Toyota was
27
28

1 *invited in 2008. (The NHTSA knows that Audi as adopted*
2 *a system that closes the throttle when the brakes are*
3 *applied and that GM will also introduce such a system.)*

4
5
6 =>In light of the information that “2 minutes before the
7 crash an occupant made a call to 911 stating that the
8 accelerator pedal was stuck and the vehicle would not
9 stop.” I think that Body Engineering Div. should act
10 proactively first (investigate issues such as whether the
11 accelerator assy [sic] structure is the cause, how to secure
12 the floor mats, the timing for introducing shape
13 improvements).

14
15
16 - Furthermore, taking into account the circumstances that
17 “in this event a police officer and his entire family
18 including his child died.” TMS-POSS Public Affairs
19 Group thinks that “the NHTSA and USA public already
20 hold very harsh opinions in regards to Toyota.” (As I think
21 you know, in some cases in the USA “killing a police
22 officer means the death penalty.”)

23
24
25 - In light of the above, it would not be an exaggeration to
26 say that even more than the nuance of the information
27 passed from Customer Quality Engineering Div. External
28

1 Relations Dept. to Body Engineering Div.,” the NHTSA is
2 furious over Toyota’s handling of things, including the
3 previous Tacoma and ES issues.” [Emphasis added.]

4 334. Volkswagen, Audi, BMW and Mercedes-Benz also install such systems
5 in at least some of their cars, some as far back as 10 years ago. Nissan has been
6 using brake-override since 2004. Infiniti also has such a system. General Motors
7 installs brake-override in all of its cars in which it is possible for the engine at full
8 throttle to overwhelm the brakes.

9
10 335. It is estimated that it would cost \$1 million in development costs –
11 typically less than \$1 per vehicle – to add such a system.

12 336. On December 5, 2010, TMS announced it will install brake-overrides in
13 2011 vehicles.

14 337. On February 22, 2010, TMC announced that it would install a brake-
15 override system on an expanded range of customers’ vehicles to provide an
16 additional “measure of confidence.” According to the announcement, this braking
17 system enhancement will automatically reduce engine power when the brake pedal
18 and the accelerator pedal are applied simultaneously under certain driving
19 conditions.

20 338. The following models are eligible for the brake-override “confidence”
21 upgrade: 2005-2010 Tacoma, 2009-2010 Venza, 2008-2010 Sequoia, 2007-2010
22 Camry, 2005-2010 Avalon, 2007-2010 Lexus ES350, 2006-2010 IS 350 and 2006-
23 2010 IS 250 models.

24 339. “Expansion of this brake override system underscores Toyota’s
25 commitment to building the safest and most reliable vehicles on the road, as we have
26

1 for 50 years, and to ensuring that our customers have complete confidence in the
2 vehicles they drive,” said Jim Lentz, President and Chief Operating Officer of TMS.
3 Lentz did not address why this commitment to quality did not result in a brake-
4 override being installed as early as 2002 when SUA complaints were received.
5 Lentz did not explain why millions of other Toyota vehicles, such as the model year
6 2002-2006 Camrys, would not be eligible for the brake-override.
7

8 340. Importantly, the brake-override was not announced as a “Safety Recall.”
9 Rather, it was implemented to boost consumer “confidence.” And the confidence
10 booster is not being installed in all models with the SUA defect, such as the 2002-
11 2006 Camrys.
12

13 341. In view of the propensity of UA Toyota’s vehicles to suddenly
14 accelerate out of the drivers’ control, each vehicle was defective for failure to have
15 an appropriate fail safe. Toyota identified each of these fail safes yet failed to
16 implement them in a timely fashion as reflected in an internal “Privileged and
17 Confidential” e-mail:
18

19 Push Button Ignition

20 One of the ways to stop a “runaway” vehicle is to shut off
21 the engine while the vehicle is in motion. NHTSA is
22 concerned that owners are unclear how to shut off the
23 engine when the vehicle is in motion. In addition, the
24 ES350 owners manual is unclear (see attached letter re:
25 Pepski Petition). NHTSA has surveyed ES350 owners and
26 informed me that they believe their data indicates owners
27 are not familiar with the Toyota functionality. The Toyota
28

1 Smart Key System requires the operator to hold the ignition
2 button for 3 seconds to shut off the engine when the vehicle
3 is in motion. When the vehicle is stopped, a momentary
4 press of the ignition button shuts off the engine. NHTSA
5 has reports that some owners tried tapping the ignition
6 button to shut it off instead of holding it for three seconds.
7 While they do not believe this is the correct method, they
8 have been working with the SAE to develop a standard for
9 keyless ignition systems. But it is important to note that
10 they think it is one of the attributes that may lead to the
11 occurrence of the long-duration, high speed events.
12
13

14 Sequential Shift Transmission

15 Another way to stop a runaway vehicle is by placing the
16 transmission in Neutral. NHTSA is concerned that the
17 layout of the Sequential Shift Transmission may confuse the
18 operator (especially in a panic situation) because the "N" is
19 adjacent to the "+." To the left of the D position is a gated
20 area where the shift lever can be pushed forward to upshift,
21 and pulled back for a downshift. The N position is above
22 the D position. In such a layout, the "+" and the "N" are very
23 close to the same longitudinal position, with the "+" closer to
24 the driver. If, NHTSA supposes, the transmission was in
25 the Sequential Shift mode, the driver could confuse the
26
27
28

1 upshift position for the neutral position. They believe that
2 in a panic situation, there is a chance this could occur.
3

4 Braking Effectiveness

5 With an accelerator pedal stuck at wide open throttle,
6 NHTSA agrees that one forceful application of the brake
7 pedal can safely stop the vehicle. However, in many
8 reports and inspections they have found brakes burned or
9 brake pads completely depleted after the event. NHTSA
10 understands that with the engine at wide open throttle,
11 vacuum is not being supplied to the brake booster. This
12 means that the power braking system has potentially two or
13 three applications left before the vacuum assist is depleted.
14 They believe that in the long duration events, the brake
15 booster is being depleted by the driver. They think that the
16 driver that initially experiences the event recognizes the
17 vehicle is accelerating and presses the brakes. The vehicle
18 slows, so the driver releases the brakes and the vehicle
19 accelerates again. They repeat this process and before they
20 realize, the power assist is lost and the vehicle becomes
21 more difficult to stop. The driver applies the brake pedal
22 with a lot of force, and this can result in severe damage to
23 the braking system, and/or a brake fire.
24
25
26
27
28

1 342. In a January 22, 2010 internal email, Toyota Canada, admitted that due
2 to the UA issues created by floor mats and gas pedals there was “logic” in that a
3 “brake over-ride would be effective in any failures to prevent accidents. TC wanted
4 us to employ it as soon as possible.”
5

6 **L. The Defects Causing Unintended Accelerations Have Caused Defective**
7 **Vehicles’ Values to Plummet**

8 343. A car purchased or leased under the reasonable assumption that it is
9 “safe” as advertised is worth more than a car known to be subject to the risk of an
10 uncontrollable and possibly life-threatening SUA event. All purchasers of the
11 Defective Vehicles overpaid for their cars. As news of the SUA defect hit the press,
12 the value of Toyota vehicles have materially diminished. Some class members
13 attempted to return their vehicles due to the fear of a SUA event. Toyota has
14 uniformly refused to refund the price of a vehicle a Plaintiff or class member sought
15 to return.
16

17 344. The economic loss suffered by class members is revealed by the
18 following few examples. From the start of the spring market through the summer of
19 2009, the 2007 Toyota Camry LE and the 2007 Nissan Altima stayed consistent with
20 each other, depreciating \$438 and \$295 respectively through these five months
21 (April 09-Aug 09). As news of the Camry recall started to spread, however, the
22 Camry took a nose dive, losing nearly 2.5 times the loss in value of its competitor, the
23 2007 Nissan Altima. More staggering is that the Camry lost \$400 in value from
24 January-April 2010 when almost every used vehicle historically gains significant
25 value during these months. By March 2010, the delta between the Nissan and the
26 Camry was over \$1,200.
27
28

1 345. From April 2009 through September 2009, the Corolla increased in
2 value over its competitor, the Nissan and the Sentra by \$210. However, as the storm
3 clouds started to gather over the rest of the Toyota line, the trend reversed. During
4 the next seven months, the Sentra only dropped \$174 in value, while the Corolla
5 dropped \$839. This is a difference of \$665. The change in this trend resulted in an
6 \$875 negative swing for the Corolla versus the Sentra in a year's time, a decrease in
7 value for the Corolla of almost four times that of the Sentra.
8

9 346. From April 2009 through August 2009, the Toyota RAV4 increased in
10 value over its competitor the Honda CRV by \$472. But as the Toyota problems
11 continued, this trend also reversed. During the next eight months, the CRV dropped
12 \$1,273 in value, while the RAV4 dropped \$2,206. This is a net difference of \$933.
13 The change in this trend resulted in a \$1,405 negative swing for the RAV4 versus the
14 CRV in a year's time.
15

16 347. Purchasers and lessees paid more for the car, through a higher purchase
17 price or higher lease payments, than they would have had the defects and non-
18 conformities been disclosed. In addition to being tied to a defective vehicle and
19 having paid a higher rate than would have been the case if the defects were
20 disclosed, lessees can, in some cases, end up paying for the difference in projected
21 residual value and actual or realized value (*e.g.*, early termination clauses; open-end
22 leases) at the end of their leases. In these situations, lessees must come out of pocket
23 to pay for the diminution in value caused by the partial disclosure of the SUA and
24 brake-override defects to terminate their leases.
25
26
27
28

M. Choice of Law Allegations

348. TMS is headquartered in Torrance, California. According to a Toyota brochure regarding its United States Operations 2009, TMS is “Toyota’s U.S. sales and marketing arm,” which “oversees sales and other operations in 49 states.”⁶⁶

349. Toyota does substantial business in California, with a significant portion of the proposed Nationwide Class located in California. For example, approximately 18% of Toyotas were sold in California⁶⁷ and 16% of Lexus vehicles were sold or leased in California.

350. California hosts a significant number of Toyota’s U.S. operations. In California, Toyota maintains both Toyota and Lexus Sales and Service Offices, Financial Service Offices, Manufacturing Facilities, a Research and Development Center, and a Design Center. Also, Toyota Motor Engineering and Manufacturing North America, Inc. is headquartered in Kentucky, but has major operations in Torrance, California, as well as in Michigan and Arizona.

351. In addition, the conduct that forms the basis for each and every class members’ claims against Toyota emanated from TMS’ headquarters in Torrance, California.

⁶⁶ http://pressroom.toyota.com/pr/tms/document/TNA_OPS_MAP_2009.pdf.

⁶⁷ Available at http://www.nytimes.com/2010/03/16/opinion/16herbert.html?_r=1, date last visited August 1, 2010.

1 352. Toyota personnel responsible for customer communications are located
2 at TMS' California headquarters, and the core decision not to disclose the sudden
3 acceleration defect to consumers was made and implemented from there.
4

5 353. Throughout the class period, TMS, in concert with its California
6 advertising agencies, failed to disclose the existence of the sudden acceleration
7 defect. Toyota is the exclusive client of Saatchi & Saatchi LA, also located in
8 Torrance, California. The only client work displayed on its website is for Toyota,
9 and it has received many awards over the years for various Toyota campaigns.⁶⁸
10

11 354. Personnel at Saatchi & Saatchi LA have direct ties to Toyota, including
12 CEO Kurt Ritter, who is a member of the Toyota Worldwide Executive Board, and
13 Chief Strategy Officer Mark Turner, who also "sits on Toyota's Worldwide
14 Executive Board, as the strategic lead for all Toyota business managed by the
15 Saatchi network throughout the world." President Chuck Maguy is described as a
16 longtime veteran of the Toyota account who returned to Saatchi LA in early 2009
17 after serving as Executive Director at Saatchi & Saatchi LA's sister agency, Team
18 One, where he managed the Lexus brand.
19
20
21

22 355. Team One is also located in California with its headquarters in El
23 Segundo (about 12 miles from Torrance, California), and its CEO, Kurt Ritter, who
24
25
26
27

28 ⁶⁸ <http://www.saatchila.com/>.

1 is a member of the Toyota Worldwide Executive Board, is also CEO for Saatchi &
2 Saatchi LA.⁶⁹

3
4 356. Marketing campaigns falsely promoting Toyotas as safe and reliable
5 were conceived and designed in California.

6 357. Toyota personnel responsible for managing Toyota's customer service
7 division are located at the TMS' California headquarters. The "Customer
8 Experience Center" directs customers to call 1-800-331-4331, which is a landline in
9 Torrance, California, and to fax to 310-468-7814, which includes the area code for
10 Torrance, California.⁷⁰ Customers are directed to send correspondence to Toyota
11 Motor Sales, U.S.A., Inc., 19001 South Western Ave., Dept. WC11, Torrance, CA
12 90501. In addition, personnel from Toyota Motor Sales in Torrance, California, also
13 communicate via e-mail with customers concerned about sudden acceleration.
14
15
16

17 358. These California personnel implemented Toyota's decision to deny the
18 existence of the SUA and brake-override defects when customers called to complain
19 and instead blame floor mats and sticking accelerator pedals or driver error. For
20 example, a series of e-mail exchanges with a customer concerned about incidents of
21 sudden acceleration with his Prius show that the California personnel indicated that
22 upon inspection Toyota found his vehicle "to be operating as designed" and
23 "recommend[ed] removing the driver's side floor mat." The California personnel
24
25
26

27 ⁶⁹ <http://www.teamone-usa.com/>.

28 ⁷⁰ <http://www.toyota.com/help/contactus.html>.

1 also indicated that “Toyota has commissioned Exponent, one of the country’s
2 leading engineering and scientific consulting firms, to conduct a comprehensive
3 analysis of the electronic throttle control systems in Toyota and Lexus vehicles.”
4

5 359. According to the LOS ANGELES TIMES, a 56-page report that Menlo
6 Park, California-based Exponent sent to Congress on February 9, 2010, found that
7 the system behaved as intended and that Exponent was “unable to induce ...
8 unintended acceleration or behavior that might be a precursor to such an event.”⁷¹
9 Presumably, the tests performed by Exponent took place in California because
10 Southern Illinois University’s David Gilbert had to fly to California to see a
11 demonstration at Exponent after he testified before the House Energy and Commerce
12 Committee regarding his ability to demonstrate electronic failure modes in a Toyota
13 Avalon to recreate the acceleration without triggering any trouble codes in the
14 vehicle’s computer.
15
16
17

18 360. Toyota personnel responsible for communicating with dealers regarding
19 known problems with Defective Vehicles are also located at TMS’ California
20 headquarters, and the decision not to inform Toyota dealers of the SUA defect was
21 made and implemented from there.
22
23

24 361. Toyota personnel responsible for managing the distribution of
25 replacement floor mats and accelerator pedal parts to Toyota dealerships are located
26

27 ⁷¹ *Toyota Calls in Exponent, Inc. As Hired Gun*, LA TIMES (Feb. 18, 2010),
28 available at <http://articles.latimes.com/2010/feb/18/business/la-fi-toyota-exponent18-2010feb18>, date last visited August 1, 2010.

1 at TMS' California headquarters. The decision to supply replacement parts
2 inadequate to address the SUA defect was made and implemented from Toyota's
3 California headquarters.
4

5 362. In addition, some of the most renowned cases of sudden acceleration
6 occurred in California. For example, in August 2009, California Highway Patrol
7 Officer Mark Saylor and his family were killed after the Lexus ES350 they were
8 driving went out of control during an episode of unintended acceleration. The
9 vehicle crashed into an SUV, ran through a fence, rolled over and burst into flames
10 in San Diego, California.
11
12

13 363. Toyota's presence is more substantial in California than any other state.
14 Since 1991, it has manufactured 2,454,336 Tacomas and since 1986, 3,000,935
15 Corollas in California. It has four "Financial Service Offices" in California, a "Hiro"
16 operation or manufacturing facility, a research and development center, and a design
17 center in California. It has more employees in California than any other state, with
18 10,725 "direct employees" and 21,485 "indirect employees."
19

20 364. Lexus is also headquartered in Torrance, California. Advertisements for
21 Lexus, and decisions on how to respond to customer complaints on SUA, were made
22 in California.
23

24 365. On information and belief, during the class period hundreds of
25 thousands or millions of Defective Vehicles manufactured in Japan have entered the
26 United States at ports in California.
27
28

V. CLASS ALLEGATIONS

A. The Nationwide Consumer Class

366. Pursuant to Rules 23(a), (b)(2), and (b)(3) of the Federal Rules of Civil Procedure, Plaintiffs bring this action on behalf of themselves and a Nationwide Consumer Class initially defined as follows:

All individuals or entities who purchased, own or lease a Toyota vehicle manufactured, designed or sold in the United States with ETCS.

367. Excluded from the Nationwide Consumer Class are Defendants, their employees, co-conspirators, officers, directors, legal representatives, heirs, successors and wholly or partly owned subsidiaries or affiliated companies; class counsel and their employees; and the judicial officers and their immediate family members and associated court staff assigned to this case, and all persons within the third degree of relationship to any such persons. Also excluded are any individuals claiming damages from personal injuries arising from a SUA incident.

368. The Nationwide Consumer Class pursues claims for violation of the Consumers Legal Remedies Act, CAL. CIV. CODE § 1750 *et seq.*; violation of the Unfair Competition Law, CAL. BUS. & PROF. CODE § 17200 *et seq.*; violation of the False Advertising Law, CAL. BUS. & PROF. CODE § 17500 *et seq.*; breach of express warranty under CAL. COM. CODE § 2313; breach of implied warranty of merchantability under CAL. COM. CODE § 2314; revocation of acceptance under CAL. COM. CODE § 2608; violations of the Magnuson-Moss Warranty Act, 15 U.S.C.

1 § 2301 *et seq.*; breach of the California common law of contract and warranty; and
2 violation of the California common law of unjust enrichment or restitution.⁷²

3 369. Pursuant to Rule 23(a)(1), the Nationwide Consumer Class is so
4 numerous that joinder of all members is impracticable. Due to the nature of the trade
5 and commerce involved, the members of the Nationwide Consumer Class are
6 geographically dispersed throughout the United States and joinder of all Nationwide
7 Consumer Class members would be impracticable. While the exact number of
8 Nationwide Consumer Class members is unknown to Plaintiffs at this time, Plaintiffs
9 believe that there are, at least, millions of members of the Nationwide Consumer
10 Class.
11

12 370. Pursuant to Rule 23(a)(3), Plaintiffs' claims are typical of the claims of
13 the other members of the Nationwide Consumer Class. Plaintiffs and other class
14 members received the same standardized misrepresentations, warranties, and
15 nondisclosures about the safety and quality of Defective Vehicles. Toyota's
16 misrepresentations were made pursuant to a standardized policy and procedure
17 implemented by Toyota. Plaintiffs and class members purchased or leased Toyotas
18 that they would not have purchased or leased at all, or for as much as they paid, had
19 they known the truth regarding a SUA defect. Plaintiffs and the members of the
20 Nationwide Class have all sustained injury in that they overpaid for Toyotas due to
21 Defendants' wrongful conduct.
22
23
24
25

26 ⁷² Should the Court decline to apply California law to claims of non-California
27 residents Plaintiffs in both classes will seek leave to amend to allege the applicable
28 laws in the fifty states.

1 371. Pursuant to Rule 23(a)(4) and (g)(1), Plaintiffs will fairly and
2 adequately protect the interests of the members of the Nationwide Consumer Class
3 and have retained counsel competent and experienced in class action and consumer
4 fraud litigation.

5 372. Pursuant to Rules 23(b)(2), Toyota has acted or refused to act on
6 grounds generally applicable to the Nationwide Consumer Class, thereby making
7 appropriate final injunctive relief or corresponding declaratory relief with respect to
8 the class as a whole. In particular, Toyota has failed to properly repair Subject
9 Vehicles and has failed to adequately implement a brake-override repair.
10

11 373. Pursuant to Rule 23(a)(2) and (b)(3), common questions of law and fact
12 exist as to all members of the Nationwide Consumer Class and predominate over any
13 questions solely affecting individual members thereof. Among the common
14 questions of law and fact are as follows:
15

16 a. Whether Toyota had knowledge of the defects prior to its
17 issuance of the current safety recalls;

18 b. Whether Toyota concealed defects affecting Defective Vehicles;

19 c. Whether Toyota misrepresented the safety of the automotive
20 vehicles at issue;
21

22 d. Whether Toyota's misrepresentations and omissions regarding
23 the safety of its vehicles were likely to deceive a reasonable person in violation of
24 the CLRA;

25 e. Whether Toyota violated the unlawful prong of the UCL by its
26 violation of the CLRA;
27
28

1 f. Whether Toyota violated the unlawful prong of the UCL by its
2 violation of federal laws;

3 g. Whether Toyota's misrepresentations and omissions regarding
4 the safety of its vehicles were likely to deceive a reasonable person in violation of
5 the fraudulent prong of the UCL;

6 h. Whether Toyota's business practices, including the manufacture
7 and sale of vehicles with an unintended acceleration defect that Defendants have
8 failed to adequately investigate, disclose and remedy, offend established public
9 policy and cause harm to consumers that greatly outweighs any benefits associated
10 with those practices;

11 i. Whether Toyota's misrepresentations and omissions regarding
12 the safety of its vehicles were likely to deceive a reasonable person in violation of
13 the FAL;

14 j. Whether Toyota breached its express warranties regarding the
15 safety and quality of its vehicles;

16 k. Whether Toyota breached the implied warranty of
17 merchantability because its vehicles were not fit for their ordinary purpose due to
18 their sudden acceleration defect;

19 l. Whether Toyota was unjustly enriched at the expense of Plaintiffs
20 and the Nationwide Consumer Class;

21 m. Whether Plaintiffs and class members are entitled to damages,
22 restitution, restitutionary disgorgement, equitable relief, and/or other relief; and

23 n. The amount and nature of such relief to be awarded to Plaintiffs
24 and the Nationwide Consumer Class.
25
26
27
28

1 374. Pursuant to Rules 23(b)(3), a class action is superior to other available
2 methods for the fair and efficient adjudication of this controversy because joinder of
3 all class members is impracticable. The prosecution of separate actions by individual
4 members of the Nationwide Consumer Class would impose heavy burdens upon the
5 courts and Defendants, and would create a risk of inconsistent or varying
6 adjudications of the questions of law and fact common to those classes. A class
7 action would achieve substantial economies of time, effort and expense, and would
8 assure uniformity of decision as to persons similarly situated without sacrificing
9 procedural fairness.
10

11 **B. Non-Consumer Economic Loss Class**

12 375. Pursuant to Rules 23(a), (b)(2), and (b)(3) of the Federal Rules of Civil
13 Procedure, the Commercial Plaintiffs bring this action on behalf of themselves and a
14 Nationwide Commercial Class initially defined as follows:
15

16 All individuals or entities in the United States who
17 purchased, leased and/or insured the residual value of a
18 Toyota vehicle with ETCS and were engaged in the
19 business of vehicle sales, rentals, or providing residual
20 value insurance for those vehicles.
21

22 Excluded from the Nationwide Commercial Class are Defendants, their employees,
23 co-conspirators, officers, directors, legal representatives, heirs, successors and
24 wholly or partly owned subsidiaries or affiliated companies; class counsel and their
25 employees; and the judicial officers and their immediate family members and
26 associated court staff assigned to this case, and all persons within the third degree of
27 relationship to any such persons.
28

1 376. The Nationwide Commercial Class pursues claims for violation of the
2 Unfair Competition Law, CAL. BUS. & PROF. CODE § 17200 *et seq.*; violation of the
3 False Advertising Law, CAL. BUS. & PROF. CODE § 17500 *et seq.*; breach of express
4 warranty under CAL. COM. CODE § 2313; breach of implied warranty of
5 merchantability under CAL. COM. CODE § 2314; revocation of acceptance under CAL.
6 COM. CODE § 2608; breach of the California common law of contract; and common
7 law for fraudulent concealment, unjust enrichment or restitution.
8

9 377. Pursuant to Rule 23(a)(1), the Nationwide Commercial Class is so
10 numerous that joinder of all members is impracticable. Due to the nature of the trade
11 and commerce involved, the members of the Nationwide Commercial Class are
12 geographically dispersed throughout the United States, and joinder of all Nationwide
13 Commercial Class members would be impracticable. While the exact number of
14 Nationwide Commercial Class members is unknown to Plaintiffs at this time,
15 Plaintiffs believe that there are thousands of members of the Nationwide Commercial
16 Class.
17

18 378. Pursuant to Rule 23(a)(3), Commercial Plaintiffs' claims are typical of
19 the claims of the other members of the Nationwide Commercial Class. Commercial
20 Plaintiffs and other class members received the same standardized
21 misrepresentations, warranties, and nondisclosures about the safety and quality of
22 Defective Vehicles. Toyota's misrepresentations were made pursuant to a
23 standardized policy and procedure implemented by Toyota. Commercial Plaintiffs
24 and class members purchased or leased Toyotas for commercial purposes, and they
25 would not have purchased or leased the vehicles, or paid as much as they paid, had
26 they known the truth regarding a SUA defect. Commercial Plaintiffs and the
27
28

1 members of the Nationwide Commercial Class have all sustained injury in that they
2 overpaid for Toyotas due to Defendants' wrongful conduct and experienced damages
3 from the inability to use the vehicles for the commercial purposes for which they
4 were purchased or leased.

5
6 379. Pursuant to Rule 23(a)(4) and (g)(1), Commercial Plaintiffs will fairly
7 and adequately protect the interests of the members of the Nationwide Commercial
8 Class and California Subclass and have retained counsel competent and experienced
9 in class action and consumer fraud litigation.

10 380. Pursuant to Rule 23(b)(2), Toyota has acted or refused to act on grounds
11 generally applicable to the Nationwide Commercial Class, thereby making
12 appropriate final injunctive relief or corresponding declaratory relief with respect to
13 those classes as a whole.

14
15 381. Pursuant to Rule 23(a)(2) and (b)(3), common questions of law and fact
16 exist as to all members of the Nationwide Commercial Class and predominate over
17 any questions solely affecting individual members thereof. Among the common
18 questions of law and fact are as follows:

19
20 a. Whether Toyota had knowledge of the design defects prior to its
21 issuance of the current safety recalls;

22 b. Whether Toyota concealed design defects affecting Defective
23 Vehicles;

24
25 c. Whether Toyota misrepresented the safety of the automotive
26 vehicles at issue;
27
28

1 d. Whether Toyota violated the unlawful prong of the UCL by its
2 violation of the CLRA;

3 e. Whether Toyota violated the unlawful prong of the UCL by its
4 violation of federal laws;

5 f. Whether Toyota's misrepresentations and omissions regarding
6 the safety of its vehicles were likely to deceive a reasonable person in violation of
7 the fraudulent prong of the UCL;
8

9 g. Whether Toyota's business practices, including the manufacture
10 and sale of vehicles with a SUA defect that Defendants have failed to adequately
11 investigate, disclose and remedy, offend established public policy and cause harm to
12 consumers that greatly outweighs any benefits associated with those practices;
13

14 h. Whether Toyota's misrepresentations and omissions regarding
15 the safety of its vehicles were likely to deceive a reasonable person in violation of
16 the FAL;
17

18 i. Whether Toyota breached its express warranties regarding the
19 safety and quality of its vehicles;
20

21 j. Whether Toyota breached the implied warranty of
22 merchantability because its vehicles were not fit for their ordinary purpose due to
23 their sudden acceleration defect;
24

25 k. Whether Toyota was unjustly enriched at the expense of Plaintiffs
26 and the Nationwide Commercial Class;
27
28

1 l. Whether Commercial Plaintiffs and class members are entitled to
2 damages, restitution, restitutionary disgorgement, equitable relief, and/or other relief;

3 m. The amount and nature of such relief to be awarded to
4 Commercial Plaintiffs and the Nationwide Commercial Class; and
5

6 n. Whether Defendants committed fraud by intentionally concealing
7 omitted facts.
8

9 382. Pursuant to Rule 23(b)(3), a class action is superior to other available
10 methods for the fair and efficient adjudication of this controversy because joinder of
11 all Nationwide Commercial Class members is impracticable. The prosecution of
12 separate actions by individual members of the Nationwide Commercial Class would
13 impose heavy burdens upon the courts and Defendants, and would create a risk of
14 inconsistent or varying adjudications of the questions of law and fact common to
15 those classes. A class action would achieve substantial economies of time, effort and
16 expense, and would assure uniformity of decision as to persons similarly situated
17 without sacrificing procedural fairness.
18

19 **C. Alternate State Law Classes**
20

21 383. In the event that the Court does not apply California law on a
22 nationwide basis, plaintiffs allege a separate class for each State and the District of
23 Columbia based upon the applicable laws set forth in the alternate state law counts.
24 Each class is defined as follows for the claims asserted under a particular
25 jurisdiction's law:
26
27
28

1 During the fullest period allowed by law, all persons or
2 entities, who purchased or leased in the state of Alabama a
3 Toyota vehicle with ETCS.
4

5 During the fullest period allowed by law, all persons or
6 entities, who purchased or leased in the state of Alaska a
7 Toyota vehicle with ETCS.
8

9
10 During the fullest period allowed by law, all persons or
11 entities, who purchased or leased in the state of Arizona a
12 Toyota vehicle with ETCS.
13

14
15 During the fullest period allowed by law, all persons or
16 entities, who purchased or leased in the state of Arkansas a
17 Toyota vehicle with ETCS.
18

19 During the fullest period allowed by law, all persons or
20 entities, who purchased or leased in the state of California a
21 Toyota vehicle with ETCS.
22

23
24 During the fullest period allowed by law, all persons or
25 entities, who purchased or leased in the state of Colorado a
26 Toyota vehicle with ETCS.
27
28

1 During the fullest period allowed by law, all persons or
2 entities, who purchased or leased in the state of
3 Connecticut a Toyota vehicle with ETCS.
4

5 During the fullest period allowed by law, all persons or
6 entities, who purchased or leased in the state of Delaware a
7 Toyota vehicle with ETCS.
8

9
10 During the fullest period allowed by law, all persons or
11 entities, who purchased or leased in the District of
12 Columbia a Toyota vehicle with ETCS.
13

14
15 During the fullest period allowed by law, all persons or
16 entities, who purchased or leased in the state of Florida a
17 Toyota vehicle with ETCS.
18

19 During the fullest period allowed by law, all persons or
20 entities, who purchased or leased in the state of Georgia a
21 Toyota vehicle with ETCS.
22

23
24 During the fullest period allowed by law, all persons or
25 entities, who purchased or leased in the state of Hawaii a
26 Toyota vehicle with ETCS.
27
28

1 During the fullest period allowed by law, all persons or
2 entities, who purchased or leased in the state of Idaho a
3 Toyota vehicle with ETCS.
4

5 During the fullest period allowed by law, all persons or
6 entities, who purchased or leased in the state of Illinois a
7 Toyota vehicle with ETCS.
8

9
10 During the fullest period allowed by law, all persons or
11 entities, who purchased or leased in the state of Indiana a
12 Toyota vehicle with ETCS.
13

14
15 During the fullest period allowed by law, all persons or
16 entities, who purchased or leased in the state of Iowa a
17 Toyota vehicle with ETCS.
18

19 During the fullest period allowed by law, all persons or
20 entities, who purchased or leased in the state of Kansas a
21 Toyota vehicle with ETCS.
22

23
24 During the fullest period allowed by law, all persons or
25 entities, who purchased or leased in the state of Kentucky a
26 Toyota vehicle with ETCS.
27
28

1 During the fullest period allowed by law, all persons or
2 entities, who purchased or leased in the state of Louisiana a
3 Toyota vehicle with ETCS.
4

5 During the fullest period allowed by law, all persons or
6 entities, who purchased or leased in the state of Maine a
7 Toyota vehicle with ETCS.
8

9
10 During the fullest period allowed by law, all persons or
11 entities, who purchased or leased in the state of Maryland a
12 Toyota vehicle with ETCS.
13

14
15 During the fullest period allowed by law, all persons or
16 entities, who purchased or leased in the state of
17 Massachusetts a Toyota vehicle with ETCS.
18

19 During the fullest period allowed by law, all persons or
20 entities, who purchased or leased in the state of Michigan a
21 Toyota vehicle with ETCS.
22

23
24 During the fullest period allowed by law, all persons or
25 entities, who purchased or leased in the state of Minnesota
26 a Toyota vehicle with ETCS.
27
28

1 During the fullest period allowed by law, all persons or
2 entities, who purchased or leased in the state of Mississippi
3 a Toyota vehicle with ETCS.
4

5 During the fullest period allowed by law, all persons or
6 entities, who purchased or leased in the state of Missouri a
7 Toyota vehicle with ETCS.
8

9
10 During the fullest period allowed by law, all persons or
11 entities, who purchased or leased in the state of Montana a
12 Toyota vehicle with ETCS.
13

14
15 During the fullest period allowed by law, all persons or
16 entities, who purchased or leased in the state of Nebraska a
17 Toyota vehicle with ETCS.
18

19 During the fullest period allowed by law, all persons or
20 entities, who purchased or leased in the state of Nevada a
21 Toyota vehicle with ETCS.
22

23
24 During the fullest period allowed by law, all persons or
25 entities, who purchased or leased in the state of New
26 Hampshire a Toyota vehicle with ETCS.
27
28

1 During the fullest period allowed by law, all persons or
2 entities, who purchased or leased in the state of New Jersey
3 a Toyota vehicle with ETCS.
4

5 During the fullest period allowed by law, all persons or
6 entities, who purchased or leased in the state of New
7 Mexico a Toyota vehicle with ETCS.
8

9
10 During the fullest period allowed by law, all persons or
11 entities, who purchased or leased in the state of New York
12 a Toyota vehicle with ETCS.
13

14
15 During the fullest period allowed by law, all persons or
16 entities, who purchased or leased in the state of North
17 Carolina a Toyota vehicle with ETCS.
18

19 During the fullest period allowed by law, all persons or
20 entities, who purchased or leased in the state of North
21 Dakota a Toyota vehicle with ETCS.
22

23
24 During the fullest period allowed by law, all persons or
25 entities, who purchased or leased in the state of Ohio a
26 Toyota vehicle with ETCS.
27
28

1 During the fullest period allowed by law, all persons or
2 entities, who purchased or leased in the state of Oklahoma
3 a Toyota vehicle with ETCS.
4

5 During the fullest period allowed by law, all persons or
6 entities, who purchased or leased in the state of Oregon a
7 Toyota vehicle with ETCS.
8

9
10 During the fullest period allowed by law, all persons or
11 entities, who purchased or leased in the state of
12 Pennsylvania a Toyota vehicle with ETCS.
13

14
15 During the fullest period allowed by law, all persons or
16 entities, who purchased or leased in the state of Rhode
17 Island a Toyota vehicle with ETCS.
18

19 During the fullest period allowed by law, all persons or
20 entities, who purchased or leased in the state of South
21 Carolina a Toyota vehicle with ETCS.
22

23
24 During the fullest period allowed by law, all persons or
25 entities, who purchased or leased in the state of South
26 Dakota a Toyota vehicle with ETCS.
27
28

1 During the fullest period allowed by law, all persons or
2 entities, who purchased or leased in the state of Tennessee
3 a Toyota vehicle with ETCS.
4

5 During the fullest period allowed by law, all persons or
6 entities, who purchased or leased in the state of Texas a
7 Toyota vehicle with ETCS.
8

9
10 During the fullest period allowed by law, all persons or
11 entities, who purchased or leased in the state of Utah a
12 Toyota vehicle with ETCS.
13

14
15 During the fullest period allowed by law, all persons or
16 entities, who purchased or leased in the state of Vermont a
17 Toyota vehicle with ETCS.
18

19 During the fullest period allowed by law, all persons or
20 entities, who purchased or leased in the state of Virginia a
21 Toyota vehicle with ETCS.
22

23
24 During the fullest period allowed by law, all persons or
25 entities, who purchased or leased in the state of
26 Washington a Toyota vehicle with ETCS.
27
28

1 During the fullest period allowed by law, all persons or
2 entities, who purchased or leased in the state of West
3 Virginia a Toyota vehicle with ETCS.
4

5 During the fullest period allowed by law, all persons or
6 entities, who purchased or leased in the state of Wisconsin
7 a Toyota vehicle with ETCS.
8

9
10 During the fullest period allowed by law, all persons or
11 entities, who purchased or leased in the state of Wyoming a
12 Toyota vehicle with ETCS.
13

14 384. As to each state class plaintiffs incorporate by reference the previous
15 allegations as to the Rule 23 requirements.

16 385. Counts I-X are asserted on behalf of the nationwide classes and in the
17 event the Court declines to apply California law nationwide, these Counts are
18 asserted on behalf of the California Class.
19

20 **COUNT I**

21 **VIOLATIONS OF THE CONSUMER LEGAL REMEDIES ACT** 22 **(CAL. CIV. CODE § 1750, *et seq.*)**

23 386. The Nationwide Consumer Plaintiffs incorporate the allegations set
24 forth above as if fully set forth herein.

25 387. TMC and TMS are “persons” under CAL. CIV. CODE § 1761(c).

26 388. Consumer Plaintiffs are “consumers,” as defined by CAL. CIV. CODE
27 § 1761(d), who purchased or leased one or more Defective Vehicles.
28

1 389. Consumer Plaintiffs attach as Exhibit A an affidavit that shows venue in
2 this District is proper, to the extent such an affidavit is required by CAL. CIV. CODE
3 § 1780(d).

4 390. TMC and TMS both participated in unfair or deceptive acts or practices
5 that violated the Consumer Legal Remedies Act (“CLRA”), CAL. CIV. CODE § 1750,
6 *et seq.*, as described above and below. TMC and TMS each are directly liable for
7 these violations of law. TMC also is liable for TMS’s violations of the CLRA
8 because TMS acts as TMC’s general agent in the United States for purposes of sales
9 and marketing.
10

11 391. By failing to disclose and actively concealing the dangerous risk of
12 throttle control failure and the lack of adequate fail-safe mechanisms in Defective
13 Vehicles equipped with ETCS, TMC and TMS engaged in deceptive business
14 practices prohibited by the CLRA, CAL. CIV. CODE § 1750, *et seq.*, including
15 (1) representing that Defective Vehicles have characteristics, uses, benefits, and
16 qualities which they do not have, (2) representing that Defective Vehicles are of a
17 particular standard, quality, and grade when they are not, (3) advertising Defective
18 Vehicles with the intent not to sell them as advertised, (4) representing that a
19 transaction involving Defective Vehicles confers or involves rights, remedies, and
20 obligations which it does not, and (5) representing that the subject of a transaction
21 involving Defective Vehicles has been supplied in accordance with a previous
22 representation when it has not.
23
24

25 392. As alleged above, TMC and TMS made numerous material statements
26 about the safety and reliability of Defective Vehicles that were either false or
27
28

1 misleading. Each of these statements contributed to the deceptive context of TMC's
2 and TMS's unlawful advertising and representations as a whole.

3 393. TMC and TMS knew that the ETCS in Defective Vehicles was
4 defectively designed or manufactured, would fail without warning, and was not
5 suitable for its intended use of regulating throttle position and vehicle speed based on
6 driver commands. TMC and TMS nevertheless failed to warn Consumer Plaintiffs
7 about these inherent dangers despite having a duty to do so.

9 394. TMC and TMS each owed Consumer Plaintiffs a duty to disclose the
10 defective nature of Defective Vehicles, including the dangerous risk of throttle
11 control failure, the ETCS defects, and the lack of adequate fail-safe mechanisms,
12 because they:

14 a. Possessed exclusive knowledge of the defects rendering
15 Defective Vehicles inherently more dangerous and unreliable than similar vehicles;

16 b. Intentionally concealed the hazardous situation with Defective
17 Vehicles through their deceptive marketing campaign and recall program that they
18 designed to hide the life-threatening problems from Consumer Plaintiffs; and/or

19 c. Made incomplete representations about the safety and reliability
20 of Defective Vehicles generally, and ETCS in particular, while purposefully
21 withholding material facts from Consumer Plaintiffs that contradicted these
22 representations.
23

24 395. Defective Vehicles equipped with ETCS pose an unreasonable risk of
25 death or serious bodily injury to Consumer Plaintiffs, passengers, other motorists,
26 pedestrians, and the public at large, because they are susceptible to incidents of SUA.
27
28

1 396. Whether or not a vehicle (a) accelerates only when commanded to do so
2 and (b) decelerates and stops when commanded to do so are facts that a reasonable
3 consumer would consider important in selecting a vehicle to purchase or lease.
4 When Consumer Plaintiffs bought a Toyota Vehicle for personal, family, or
5 household purposes, they reasonably expected the vehicle would (a) not accelerate
6 unless commanded to do so by application of the accelerator pedal or other driver-
7 controlled means; (b) decelerate to a stop when the brake pedal was applied, and was
8 equipped with any necessary fail-safe mechanisms including a brake-override.
9

10 397. TMC's and TMS's unfair or deceptive acts or practices were likely to
11 and did in fact deceive reasonable consumers, including Consumer Plaintiffs, about
12 the true safety and reliability of Defective Vehicles.
13

14 398. As a result of its violations of the CLRA detailed above, TMC and TMS
15 caused actual damage to Consumer Plaintiffs and, if not stopped, will continue to
16 harm Consumer Plaintiffs. Consumer Plaintiffs currently own or lease, or within the
17 class period have owned or leased, Defective Vehicles that are defective and
18 inherently unsafe. ETCS defects and the resulting unintended acceleration incidents
19 have caused the value of Defective Vehicles to plummet.
20

21 399. Consumer Plaintiffs risk irreparable injury as a result of TMC's and
22 TMS's acts and omissions in violation of the CLRA, and these violations present a
23 continuing risk to Consumer Plaintiffs as well as to the general public.
24

25 400. As early as November 24, 2009, notice was sent to TMS in compliance
26 with CAL. CIV. CODE § 1782. On information and belief, numerous other notices
27 have been sent, including, on or about June 4, 2010, Consumer Plaintiffs sent a
28 notice and demand letter via certified mail to TMS's principal place of business in

1 California, thereby satisfying CAL. CIV. CODE § 1782(a). On or about March 23,
2 2010, a notice and demand letter was set via certified mail to TMC's headquarters in
3 Japan, where TMC acted with its California subsidiary, TMS, to take actions
4 violating the CLRA, and where TMC otherwise acted in violation of that statute,
5 thereby satisfying CAL. CIV. CODE § 1782(a). Over thirty days have since passed
6 without TMS or TMC taking, or agreeing to take, the appropriate corrective
7 measures.
8

9 401. Pursuant to CAL. CIV. CODE § 1780(a), Consumer Plaintiffs seek
10 monetary relief against TMS and TMC measured as the greater of (a) actual damages
11 in an amount to be determined at trial and (b) statutory damages in the amount of
12 \$1,000 for each Consumer Plaintiff and each member of the class they seek to
13 represent.
14

15 402. Pursuant to CAL. CIV. CODE § 1780(b), Consumer Plaintiffs seek an
16 additional award against TMS and TMC of up to \$5,000 for each Consumer Plaintiff
17 and class member who qualifies as a "senior citizen" or "disabled person" under the
18 CLRA. TMS knew or should have known that its conduct was directed to one or
19 more of the Consumer Plaintiffs who are senior citizens or disabled persons. TMS's
20 conduct caused one or more of these senior citizens or disabled persons to suffer a
21 substantial loss of property set aside for retirement or for personal or family care and
22 maintenance, or assets essential to the health or welfare of the senior citizen or
23 disabled person. One or more of the Consumer Plaintiffs who are senior citizens or
24 disabled persons are substantially more vulnerable to Defendants' conduct because
25 of age, poor health or infirmity, impaired understanding, restricted mobility, or
26
27
28

1 disability, and each of them actually suffered substantial physical, emotional, or
2 economic damage resulting from Defendants' conduct.

3 403. Consumer Plaintiffs also seek punitive damages against Defendants
4 because each carried out despicable conduct with willful and conscious disregard of
5 the rights and safety of others, subjecting Consumer Plaintiffs to cruel and unjust
6 hardship as a result. Defendants intentionally and willfully misrepresented the safety
7 and reliability of Defective Vehicles, deceived Consumer Plaintiffs on life-or-death
8 matters, and concealed material facts that only it knew, all to avoid the expense and
9 public relations nightmare of correcting a deadly flaw in the Defective Vehicles it
10 repeatedly promised Consumer Plaintiffs were safe. Defendants' unlawful conduct
11 constitutes malice, oppression, and fraud warranting punitive damages.
12

13
14 404. The recalls and repairs instituted by Toyota have not been adequate.
15 Defective Vehicles still are defective and the "confidence" booster offer of an
16 override is not an effective remedy and is not offered to all Defective Vehicles,
17 including the 2002-2007 Camry.

18
19 405. Repairs have been incomplete. For example, Toyota documented an
20 incident with a 2007 Avalon that "unintentionally accelerated with high rotation
21 (7000 rpm) and smoke out from brake. There was an eyewitness."⁷³ The dealer
22 confirmed the "high rotation and not returning to idle" and replaced the pedal and the
23 throttle. The dealer declined to provide a document saying UA would not recur and
24 refused to buy back the vehicle. Most of the Recalled Vehicles have not had their
25 throttles replaced.
26

27
28 ⁷³ 41241T000,

COUNT II

407. Plaintiffs reallege and incorporate by reference all paragraphs alleged herein.

409. California Business and Professions Code section 17200 prohibits any “unlawful, unfair, or fraudulent business act or practices.” Defendants have engaged in unlawful, fraudulent, and unfair business acts and practices in violation of the UCL.

411. Defendants have also violated the unlawful prong because TMC and TMS have engaged in business acts or practices that are unlawful because they violate the National Traffic and Motor Vehicle Safety Act of 1996 (the “Safety Act”), codified at 49 U.S.C. § 30101, *et seq.*, and its regulations.

1 412. FMVSS 124, codified at 49 C.F.R. § 571.124, sets the standard for
2 accelerator control systems. Specifically, FMVSS 124 establishes requirements for
3 the return of a vehicle's throttle to the idle position when the driver removes the
4 actuating force from the accelerator control, or in the event of a severance or
5 disconnection in the accelerator control system. The purpose of FMVSS 124 is to
6 reduce deaths and injuries resulting from engine overspeed caused by malfunctions
7 in the accelerator control system.
8

9 413. FMVSS 124 requires that throttles in passenger vehicles return to the
10 idle position within certain maximum allowable times after the driver has removed
11 the actuating force from the accelerator control: one second for vehicles of 4,536
12 kilograms or less gross vehicle weight rating ("GVWR"), two seconds for vehicles of
13 more than 4,536 kilograms GVWR, and three seconds for any vehicle that is exposed
14 to ambient air at – 18 degrees Celsius to – 40 degrees Celsius.
15

16 414. Defective Vehicles equipped with ETCS do not comply with
17 FMVSS 124 because a design defect causes their throttles to be susceptible to
18 remaining in an open position and incapable of returning to the idle position within
19 the maximum allowable time after the driver has removed the actuating force from
20 the accelerator control.
21

22 415. TMC and TMS each violated 49 U.S.C. § 3-112(a)(1) by manufacturing
23 for sale, selling, offering for introduction in interstate commerce, or importing into
24 the United States, Defective Vehicles equipped with ETCS that failed to comply with
25 FMVSS 124.
26

27 416. TMC and TMS each violated 49 U.S.C. § 30115(a) by certifying that
28 Defective Vehicles equipped with ETCS complied with FMVSS 124 when, in the

1 exercise of reasonable care, TMC and TMS each had reason to know that the
2 certification was false or misleading because a design defect causes throttles in
3 Defective Vehicles equipped with ETCS to be susceptible to remaining in an open
4 position and incapable of returning to the idle position within the maximum
5 allowable time after the driver has removed the actuating force from the accelerator
6 control.
7

8 417. Defendants have violated the fraudulent prong of section 17200 because
9 the misrepresentations and omissions regarding the safety and reliability of their
10 vehicles as set forth in this Complaint were likely to deceive a reasonable consumer,
11 and the information would be material to a reasonable consumer.
12

13 418. Defendants have violated the unfair prong of section 17200 because the
14 acts and practices set forth in the Complaint, including the manufacture and sale of
15 vehicles with a sudden acceleration defect that lack brake-override or other effective
16 fail-safe mechanism, and Defendants' failure to adequately investigate, disclose and
17 remedy, offend established public policy, and because the harm they cause to
18 consumers greatly outweighs any benefits associated with those practices.
19

20 Defendants' conduct has also impaired competition within the automotive vehicles
21 market and has prevented Plaintiffs from making fully informed decisions about
22 whether to purchase or lease Defective Vehicles and/or the price to be paid to
23 purchase or lease Defective Vehicles.

24 419. The Named Plaintiffs have suffered an injury in fact, including the loss
25 of money or property, as a result of Defendants' unfair, unlawful and/or deceptive
26 practices. As set forth in the allegations concerning each plaintiff, in purchasing or
27 leasing their vehicles, the Plaintiffs relied on the misrepresentations and/or omissions
28

1 of Toyota with respect of the safety and reliability of the vehicles. Toyota's
2 representations turned out not to be true because the vehicles can unexpectedly and
3 dangerously accelerate out of the drivers' control. Had the Named Plaintiffs known
4 this they would not have purchased or leased their Defective Vehicles and/or paid as
5 much for them.
6

7 420. All of the wrongful conduct alleged herein occurred, and continues to
8 occur, in the conduct of Defendants' business. Defendants' wrongful conduct is part
9 of a pattern or generalized course of conduct that is still perpetuated and repeated,
10 both in the State of California and nationwide.
11

12 421. Plaintiffs request that this Court enter such orders or judgments as may
13 be necessary to enjoin Defendants from continuing their unfair, unlawful, and/or
14 deceptive practices and to restore to Plaintiffs and members of the Class any money
15 Toyota acquired by unfair competition, including restitution and/or restitutionary
16 disgorgement, as provided in CAL. BUS. & PROF. CODE § 17203 and CAL. CIV. CODE
17 § 3345; and for such other relief set forth below.
18

19 **COUNT III**

20 **VIOLATION OF THE CALIFORNIA FALSE ADVERTISING LAW** 21 **(CAL. BUS. & PROF. CODE § 17500, *et seq.*)**

22 422. Plaintiffs reallege and incorporate by reference all paragraphs alleged
23 herein.
24

25 423. Plaintiffs assert this claim on behalf of themselves and members of the
26 Nationwide Consumer and Commercial Classes on behalf of any person or entity
27 that purchased or leased a vehicle from Toyota or a Toyota dealership.
28

1 424. California Business and Professions Code § 17500 states: “It is
2 unlawful for any ... corporation ... with intent directly or indirectly to dispose of real
3 or personal property ... to induce the public to enter into any obligation relating
4 thereto, to make or disseminate or cause to be made or disseminated ... from this
5 state before the public in any state, in any newspaper or other publication, or any
6 advertising device, ... or in any other manner or means whatever, including over the
7 Internet, any statement ... which is untrue or misleading, and which is known, or
8 which by the exercise of reasonable care should be known, to be untrue or
9 misleading.”
10

11 425. Defendants caused to be made or disseminated through California and
12 the United States, through advertising, marketing and other publications, statements
13 that were untrue or misleading, and which were known, or which by the exercise of
14 reasonable care should have been known to Defendants, to be untrue and misleading
15 to consumers and Plaintiffs.
16

17 426. Defendants have violated section 17500 because the misrepresentations
18 and omissions regarding the safety and reliability of their vehicles as set forth in this
19 Complaint were material and likely to deceive a reasonable consumer.
20

21 427. Named Plaintiffs and members of the Classes have suffered an injury in
22 fact, including the loss of money or property, as a result of Defendants’ unfair,
23 unlawful and/or deceptive practices. In purchasing or leasing their vehicles, the
24 Named Plaintiffs relied on the misrepresentations and/or omissions of Toyota with
25 respect to the safety and reliability of the vehicles. Toyota’s representations turned
26 out not to be true because the vehicles can unexpectedly and dangerously accelerate
27
28

1 out of the drivers' control. Had the Named Plaintiffs known this, they would not
2 have purchased or leased their Defective Vehicles and/or paid as much for them.

3 428. Accordingly, the Named Plaintiffs overpaid for their Defective Vehicles
4 and did not receive the benefit of their bargain. One way to measure this
5 overpayment, or lost benefit of the bargain, at the moment of purchase is by the
6 value consumers place on the vehicles now that the truth has been exposed. Both
7 trade-in prices and auction prices for Subject Vehicles have declined as a result of
8 Defendants' misconduct. This decline in value measures the overpayment, or lost
9 benefit of the bargain, at the time of the Named Plaintiffs' purchases.
10

11 429. All of the wrongful conduct alleged herein occurred, and continues to
12 occur, in the conduct of Defendants' business. Defendants' wrongful conduct is part
13 of a pattern or generalized course of conduct that is still perpetuated and repeated,
14 both in the State of California and nationwide.
15

16 430. Plaintiffs request that this Court enter such orders or judgments as may
17 be necessary to enjoin Defendants from continuing their unfair, unlawful, and/or
18 deceptive practices and to restore to Plaintiffs and members of the Class any money
19 Toyota acquired by unfair competition, including restitution and/or restitutionary
20 disgorgement, and for such other relief set forth below.
21

22 **COUNT IV**

23 **BREACH OF EXPRESS WARRANTY** 24 **(CAL. COM. CODE § 2313)**

25 431. Plaintiffs incorporate by reference and reallege all paragraphs alleged
26 herein.
27
28

1 432. This Count is asserted by the Nationwide Consumer and Commercial
2 Classes.

3 433. Toyota is and was at all relevant times a merchant with respect to motor
4 vehicles under CAL. COM. CODE § 2104.

5 434. In the course of selling its vehicles, Toyota expressly warranted in
6 writing that the Vehicles were covered by a Basic Warranty that provided for the
7 following:
8

9 *Accelerator pedal failure, except pedal position sensor*
10 *malfunction*

11 36 months or 36,000 miles for the Vehicles and 48 months
12 or 50,000 miles for the Lexus vehicles from the vehicle's
13 date-of-first-use, whichever occurs first.

14 *Other electronic throttle control system failure including*
15 *pedal position sensor malfunction*

16 60 months or 60,000 miles for the Vehicles and 72 months
17 or 70,000 miles for the Lexus vehicles from the vehicle's
18 date-of-first-use, whichever occurs first.

19 435. Toyota breached the express warranty to repair and adjust to correct
20 defects in materials and workmanship of any part supplied by Toyota. Toyota has
21 not repaired or adjusted, and has been unable to repair or adjust, the Vehicles'
22 materials and workmanship defects.
23

24 436. In addition to this Basic Warranty, Toyota expressly warranted several
25 attributes, characteristics and qualities, including that:
26
27
28

- 1 • The “by-wire” technology used in the Toyota throttles was a safety
- 2 feature;
- 3 • Toyota designed their cars at the forefront of technology to enhance
- 4 active safety (driving dynamics);
- 5 • The use of the electronic throttle control system results in even
- 6 greater reliability and precision than systems based on hydraulic or
- 7 mechanical linkages;
- 8 • Toyota uses technology to deliver a high level of safety;
- 9 • Toyota employs a revolutionary electronic control systems that
- 10 boosts active safety;
- 11 • Toyota’s ETCS-i helps improve performance;
- 12 • Class-leading passive safety including 5 Star Euro NCAP rating;
- 13 • Toyota’s ETCS-i is at the forefront of active safety systems;
- 14 • Toyota promises advanced safety technology;
- 15 • Toyota customers have long counted on the brand for the best in
- 16 performance, quality and durability;
- 17 • To build safe cars, Toyota promises that it gathers information and
- 18 analyzes why accidents occur and what causes injuries, and that
- 19 “Toyota analyzes data from real accidents that take place all over the
- 20 world,” which it uses to develop new safety technologies, testing
- 21 them on actual vehicles before offering them to the public in
- 22 Toyota’s product line-up. Toyota claims that this “is a perpetual
- 23 cycle through which Toyota seeks to enhance safety technologies
- 24 and reduce accidents continuously”; and
- 25
- 26
- 27
- 28

- When it comes to the well-being of Toyota drivers and their passengers, Toyota has raised the standard.

437. These warranties are only a sampling of the numerous warranties that Toyota made relating to safety, reliability and operation, which are more fully outlined in Sections IV.A. and I., *supra*. Generally these express warranties promise heightened, superior, and state-of-the-art safety, reliability, performance standards, and promote the benefits of ETCS. These warranties were made, *inter alia*, in advertisements, in Toyota's "e-brochures," and in uniform statements provided by Toyota to be made by salespeople. These affirmations and promises were part of the basis of the bargain between the parties.

438. These additional warranties were also breached because the Defective Vehicles were not fully operational, safe, or reliable (and remained so even after the problems were acknowledged and a recall "fix" was announced), nor did they comply with the warranties expressly made to purchasers or lessees. Toyota did not provide at the time of sale, and has not provided since then, vehicles conforming to these express warranties.

439. Furthermore, the limited warranty of repair and/or adjustments to defective parts, fails in its essential purpose because the contractual remedy is insufficient to make the Plaintiffs and Plaintiff Class whole and because the Defendants have failed and/or have refused to adequately provide the promised remedies within a reasonable time.

440. Accordingly, recovery by the Plaintiffs is not limited to the limited warranty of repair or adjustments to parts defective in materials or workmanship, and Plaintiffs seek all remedies as allowed by law.

1 441. Also, as alleged in more detail herein, at the time that Defendants
2 warranted and sold the vehicles, they knew that the vehicles did not conform to the
3 warranties and were inherently defective, and Defendants wrongfully and
4 fraudulently misrepresented and/or concealed material facts regarding their vehicles.
5 Plaintiff Classes were therefore induced to purchase the vehicles under false and/or
6 fraudulent pretenses. The enforcement under these circumstances of any limitations
7 whatsoever precluding the recovery of incidental and/or consequential damages is
8 unenforceable pursuant to CAL. CIV. CODE § 1670.5 and/or § 1668.
9

10 442. Moreover, many of the damages flowing from the Defective Vehicles
11 cannot be resolved through the limited remedy of “replacement or adjustments,” as
12 those incidental and consequential damages have already been suffered due to
13 Defendants’ fraudulent conduct as alleged herein, and due to their failure and/or
14 continued failure to provide such limited remedy within a reasonable time, and any
15 limitation on Consumer Plaintiffs’ and the Nationwide Commercial Plaintiff Class’s
16 remedies would be insufficient to make Consumer Plaintiffs and the Nationwide
17 Commercial Plaintiff Class whole.
18

19 443. Finally, due to the Defendants’ breach of warranties as set forth herein,
20 Plaintiffs and the Plaintiff Classes assert as an additional and/or alternative remedy,
21 as set forth in CAL. COM. CODE § 2711, for a revocation of acceptance of the goods,
22 and for a return to Plaintiffs and to the Plaintiff Classes of the purchase price of all
23 vehicles currently owned and for such other incidental and consequential damages as
24 allowed under CAL. COM. CODE §§ 2711 and 2608.
25

26 444. Toyota was provided notice of these issues by numerous complaints
27 filed against it, including the instant Complaint, and by numerous individual letters
28

1 and communications sent by Plaintiffs and members of the Class before or within a
2 reasonable amount of time after Toyota issued the recall and the allegations of
3 vehicle defects became public.

4 445. As a direct and proximate result of Toyota's breach of express
5 warranties, Plaintiffs and the Classes have been damaged in an amount to be
6 determined at trial.
7

8 **COUNT V**

9 **BREACH OF THE IMPLIED WARRANTY OF MERCHANTABILITY**
10 **(CAL. COM. CODE § 2314)**

11 446. Plaintiffs incorporate by reference and reallege all paragraphs alleged
12 herein.

13 447. This Count is asserted by the Nationwide Consumer and Commercial
14 Classes.

15 448. Toyota is and was at all relevant times a merchant with respect to motor
16 vehicles under CAL. COM. CODE § 2104.
17

18 449. A warranty that the Defective Vehicles were in merchantable condition
19 was implied by law in the instant transaction, pursuant to CAL. COM. CODE § 2314.

20 450. These vehicles, when sold and at all times thereafter, were not in
21 merchantable condition and are not fit for the ordinary purpose for which cars are
22 used. Specifically, the Defective Vehicles are inherently defective in that there are
23 defects in the vehicle control systems that permit sudden unintended acceleration to
24 occur; the Defective Vehicles do not have an adequate fail-safe to protect against
25 such SUA events, nor do they have a brake-override; and the ETCS system was not
26 adequately tested.
27
28

1 451. Toyota was provided notice of these issues by numerous complaints
2 filed against it, including the instant Complaint, and by numerous individual letters
3 and communications sent by Plaintiffs and members of the Class before or within a
4 reasonable amount of time after Toyota issued the recall and the allegations of
5 vehicle defects became public.
6

7 452. Plaintiffs and Class members have had sufficient direct dealings with
8 either the Defendants or their agents (dealerships) to establish privity of contract
9 between Plaintiffs and the Class members. Notwithstanding this, privity is not
10 required in this case because Plaintiffs and Class members are intended third-party
11 beneficiaries of contracts between Toyota and its dealers; specifically, they are the
12 intended beneficiaries of Toyota's implied warranties. The dealers were not
13 intended to be the ultimate consumers of the Defective Vehicles and have no rights
14 under the warranty agreements provided with the Defective Vehicles; the warranty
15 agreements were designed for and intended to benefit the ultimate consumers only.
16 Finally, privity is also not required because Plaintiffs' and Class members' Toyotas
17 are dangerous instrumentalities due to the aforementioned defects and
18 nonconformities.
19
20

21 453. As a direct and proximate result of Toyota's breach of the warranties of
22 merchantability, Plaintiffs and the Classes have been damaged in an amount to be
23 proven at trial.
24
25
26
27
28

COUNT VI

**REVOCATION OF ACCEPTANCE
(CAL. COM. CODE § 2608)**

454. Each of the preceding paragraphs is incorporated by reference as though fully set forth herein.

455. The Nationwide Consumer and Commercial Plaintiffs assert this claim for revocation of acceptance of their vehicles. Plaintiffs Kathleen Atwater, Dale Baldesseri, Joel and Lucy Barker, John Geddis, Susan Gonzalez, Matthew Heidenreich, John and Mary Laidlaw, Robert Navarro, Carl Nyquist, Peggie Perkin, Frank Visconi, and Carole Young demanded revocation and the demands were refused.

456. Plaintiffs and the Classes had no knowledge of such defects and nonconformities, were unaware of these defects, and reasonably could not have discovered them when they purchased or leased their automobiles from Toyota. On the other hand, Toyota was aware of the defects and nonconformities at the time of sale and thereafter.

457. Acceptance was reasonably induced by the difficulty of discovery of the defects and nonconformities before acceptance.

458. There has been no change in the condition of Plaintiffs' vehicles not caused by the defects and nonconformities.

459. When Plaintiffs sought to revoke acceptance, Toyota refused to accept return of the Defective Vehicles and to refund Plaintiffs' purchase price and monies paid.

1 460. Plaintiffs and the Classes would suffer economic hardship if they
2 returned their vehicles but did not receive the return of all payments made by them.
3 Because Toyota is refusing to acknowledge any revocation of acceptance and return
4 immediately any payments made, Plaintiffs and the Classes have not re-accepted
5 their Defective Vehicles by retaining them.
6

7 461. These defects and nonconformities substantially impaired the value of
8 the Defective Vehicles to Plaintiffs and the Classes. This impairment stems from
9 two basic sources. First, the Defective Vehicles fail in their essential purpose
10 because they present an unreasonably high risk of SUA (a risk acknowledged by
11 Toyota's recall), rendering them unsafe in a very material way. Second, the repair
12 and adjust warranty has failed of its essential purpose because Toyota cannot repair
13 or adjust the Defective Vehicles.
14

15 462. Plaintiffs and the Classes provided notice of their intent to seek
16 revocation of acceptance by a class-action lawsuit seeking such relief. In addition,
17 Plaintiffs (and many Class members) have requested that Toyota accept return of
18 their vehicles and return all payments made. Plaintiffs on behalf of themselves and
19 the Classes hereby demand revocation and tender their Defective Vehicles.
20

21 463. Plaintiffs and the Classes would suffer economic hardship if they
22 returned their vehicles but did not receive the return of all payments made by them.
23 Because Toyota is refusing to acknowledge any revocation of acceptance and return
24 immediately any payments made, Plaintiffs and the Classes have not re-accepted
25 their Defective Vehicles by retaining them, as they must continue using them due to
26 the financial burden of securing alternative means of transport for an uncertain and
27 substantial period of time.
28

1 464. Finally, due to the Defendants' breach of warranties as set forth herein,
2 Plaintiffs and the Plaintiff Classes assert as an additional and/or alternative remedy,
3 as set forth in CAL. COM. CODE § 2711, for a revocation of acceptance of the goods,
4 and for a return to Plaintiffs and to the Plaintiff Classes of the purchase price of all
5 vehicles currently owned and for such other incidental and consequential damages as
6 allowed under CAL. COM. CODE § 2711.
7

8 465. Consequently, Plaintiffs and Class members are entitled to revoke their
9 acceptances, receive all payments made to Toyota, and to all incidental and
10 consequential damages, including the costs associated with purchasing safer vehicles,
11 and all other damages allowable under law, all in amounts to be proven at trial.
12

13 **COUNT VII**

14 **VIOLATION OF MAGNUSON-MOSS WARRANTY ACT** 15 **(15 U.S.C. § 2301, *et seq.*)**

16 466. Plaintiffs incorporate by reference and reallege all paragraphs alleged
17 herein. This Count is asserted by the Nationwide Consumer Plaintiffs and by
18 Plaintiffs Carl Nyquist and Susan Gonzalez. In the event California law does not
19 apply nationwide this Count is asserted by each state class.
20

21 467. This Court has jurisdiction to decide claims brought under 15 U.S.C.
22 § 2301 by virtue of 28 U.S.C. § 1332 (a)-(d).
23

24 468. Plaintiff is a "consumer" within the meaning of the Magnuson-Moss
25 Warranty Act, 15 U.S.C. § 2301(3).
26

27 469. Toyota is a "supplier" and "warrantor" within the meaning of the
28 Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(4)-(5).

1 470. The Defective Vehicles are “consumer products” within the meaning of
2 the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(1).

3 471. 15 U.S.C. § 2310(d)(1) provides a cause of action for any consumer
4 who is damaged by the failure of a warrantor to comply with a written or implied
5 warranty.

6 472. Toyota’s express warranties are written warranties within the meaning
7 of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(6). The Defective Vehicles’
8 implied warranties are covered under 15 U.S.C. § 2301(7).

9 473. Toyota breached these warranties as described in more detail above, but
10 generally by not repairing or adjusting the Defective Vehicles’ materials and
11 workmanship defects; providing Defective Vehicles not in merchantable condition
12 and which present an unreasonable risk of sudden unintended acceleration and not fit
13 for the ordinary purpose for which vehicles are used; providing Vehicles that were
14 not fully operational, safe, or reliable; and not curing defects and nonconformities
15 once they were identified.

16 474. Plaintiffs and Class members have had sufficient direct dealings with
17 either the Defendants or their agents (dealerships) to establish privity of contract
18 between Plaintiffs and the Class members. Notwithstanding this, privity is not
19 required in this case because Plaintiffs and Class members are intended third-party
20 beneficiaries of contracts between Toyota and its dealers; specifically, they are the
21 intended beneficiaries of Toyota’s implied warranties. The dealers were not
22 intended to be the ultimate consumers of the Vehicles and have no rights under the
23 warranty agreements provided with the Defective Vehicles; the warranty agreements
24 were designed for and intended to benefit the ultimate consumers only. Finally,
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1 privity is also not required because Plaintiffs' and Class members' Toyotas are
2 dangerous instrumentalities due to the aforementioned defects and nonconformities.

3 475. Plaintiffs Susan Gonzalez and Carl Nyquist participated in Toyota's
4 informal dispute resolution mechanism to completion and fully satisfied any
5 obligations under 15 U.S.C. § 2310(a)(3), and also provided Toyota an opportunity
6 to cure, even though no such opportunity is required in these circumstances.
7

8 476. Plaintiffs have engaged in each of Toyota's three steps to customer
9 satisfaction without their concerns being resolved. Plaintiffs Kathleen Atwater, Joel
10 and Lucy Barker, Susan Chambers, John Geddis, Joseph Hauter, Matthew
11 Heidenreich, Thomas and Connie Kamphaus, John and Mary Laidlaw, Robert
12 Navarro, Carl Nyquist, Peggie Perkin, Mary Ann Tucker, Elizabeth Van Zyl, Frank
13 Visconi, Susan Gonzalez, and Carole Young have contacted their dealerships to
14 discuss their situation with the dealership customer relations manager, without
15 adequate resolution. Plaintiffs Kathleen Atwater, Dale Baldesseri, Susan Chambers,
16 Susan Gonzalez, Robert Navarro, Carl Nyquist, Peggie Perkin, Sandra Reech,
17 Thomas and Catherine Roe, Mary Ann Tucker, and Elizabeth Van Zyl have called
18 Toyota's Customer Experience Center for assistance in working with the dealership
19 to find a satisfactory solution, without adequate resolution. And Plaintiffs Susan
20 Gonzalez and Carl Nyquist have submitted claims for free, nonbinding arbitration
21 before the National Center for Dispute Resolution, without adequate resolution.
22

23 477. Even if this were not the case, requiring an informal dispute settlement
24 procedure, or affording Toyota a reasonable opportunity to cure its breach of written
25 warranties, would be unnecessary and futile. At the time of sale or lease of each
26 Defective Vehicle, Toyota knew, should have known, or was reckless in not knowing
27
28

1 of its misrepresentations concerning the Defective Vehicles' inability to perform as
2 warranted, but nonetheless failed to rectify the situation and/or disclose the defective
3 design. Under the circumstances, the remedies available under any informal
4 settlement procedure would be inadequate and any requirement – whether under the
5 Magnuson-Moss Warranty Act or otherwise – that Plaintiff resort to an informal
6 dispute resolution procedure and/or afford Toyota a reasonable opportunity to cure
7 its breach of warranties is excused and thereby deemed satisfied.
8

9 478. Plaintiffs and the Class would suffer economic hardship if they returned
10 their vehicles but did not receive the return of all payments made by them. Because
11 Toyota is refusing to acknowledge any revocation of acceptance and return
12 immediately any payments made, Plaintiffs and the Class have not re-accepted their
13 Defective Vehicles by retaining them.
14

15 479. The amount in controversy of Plaintiffs' individual claims meets or
16 exceeds the sum of \$25. The amount in controversy of this action exceeds the sum
17 of \$50,000, exclusive of interest and costs, computed on the basis of all claims to be
18 determined in this lawsuit.
19

20 480. Plaintiffs seek to revoke their acceptance of the Defective Vehicles, or,
21 in the alternative, seek all damages, including diminution in value of their vehicles,
22 in an amount to be proven at trial.
23

24 **COUNT VIII**

25 **BREACH OF CONTRACT/COMMON LAW WARRANTY**

26 481. The Nationwide Consumer Plaintiffs incorporate by reference and
27 reallege all paragraphs alleged herein.
28

483. Toyota breached this warranty or contract obligation by failing to repair the Defective Vehicles evidencing a sudden unintended acceleration problem, including those that were recalled, or to replace them.

COUNT IX

485. Each of the preceding paragraphs is incorporated by reference as though fully set forth herein.

487. As set forth above, Defendants concealed and/or suppressed material facts concerning the safety of their vehicles.

1 Toyota's highest corporate priorities. Once Defendants made representations to the
2 public about safety, Defendants were under a duty to disclose these omitted facts,
3 because where one does speak one must speak the whole truth and not conceal any
4 facts which materially qualify those facts stated. One who volunteers information
5 must be truthful, and the telling of a half-truth calculated to deceive is fraud.
6

7 489. In addition, Defendants had a duty to disclose these omitted material
8 facts because they were known and/or accessible only to Defendants who have
9 superior knowledge and access to the facts, and Defendants knew they were not
10 known to or reasonably discoverable by Plaintiffs and the Classes. These omitted
11 facts were material because they directly impact the safety of the Defective Vehicles.
12 Whether or not a vehicle accelerates only at the driver's command, and whether a
13 vehicle will stop or not upon application of the brake by the driver, are material
14 safety concerns. Defendants possessed exclusive knowledge of the defects rendering
15 Defective Vehicles inherently more dangerous and unreliable than similar vehicles.
16

17 490. Defendants actively concealed and/or suppressed these material facts, in
18 whole or in part, with the intent to induce Plaintiffs and the Classes to purchase
19 Defective Vehicles at a higher price for the vehicles, which did not match the
20 vehicles' true value.
21

22 491. Defendants still have not made full and adequate disclosure and
23 continue to defraud Plaintiffs and the Classes.

24 492. Plaintiffs and the Classes were unaware of these omitted material facts
25 and would not have acted as they did if they had known of the concealed and/or
26 suppressed facts. Plaintiffs' and the Classes' actions were justified. Defendants
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28

1 were in exclusive control of the material facts and such facts were not known to the
2 public or the Classes.

3 493. As a result of the concealment and/or suppression of the facts, Plaintiffs
4 and the Classes sustained damage. For those Plaintiffs and the Classes who elect to
5 affirm the sale, these damages, pursuant to CAL. CIV. CODE § 3343, include the
6 difference between the actual value of that which Plaintiffs and the Classes paid and
7 the actual value of that which they received, together with additional damages arising
8 from the sales transaction, amounts expended in reliance upon the fraud,
9 compensation for loss of use and enjoyment of the property, and/or lost profits. For
10 those Plaintiffs and the Classes who want to rescind the purchase, then those
11 Plaintiffs and the Classes are entitled to restitution and consequential damages
12 pursuant to CAL. CIV. CODE § 1692.
13
14

15 494. Defendants' acts were done maliciously, oppressively, deliberately, with
16 intent to defraud, and in reckless disregard of Plaintiffs' and the Classes' rights and
17 well-being to enrich Defendants. Defendants' conduct warrants an assessment of
18 punitive damages in an amount sufficient to deter such conduct in the future, which
19 amount is to be determined according to proof.
20

21 **COUNT X**

22 **UNJUST ENRICHMENT** 23 **(BASED UPON CALIFORNIA LAW)**

24 495. Each of the preceding paragraphs is incorporated by reference as though
25 fully set forth herein.

26 496. This Count is asserted by the Nationwide Consumer and Commercial
27 Classes for restitution under California law based on Defendants' unjust enrichment.
28

1 497. As a result of their wrongful and fraudulent acts and omissions, as set
2 forth above, pertaining to the design defect of their vehicles and the concealment of
3 the defect, Defendants charged a higher price for their vehicles than the vehicles'
4 true value and Defendants obtained monies which rightfully belong to Plaintiffs.
5

6 498. Defendants enjoyed the benefit of increased financial gains, to the
7 detriment of Plaintiffs and other Class members, who paid a higher price for vehicles
8 which actually had lower values. It would be inequitable and unjust for Defendants
9 to retain these wrongfully obtained profits.

10 499. Plaintiffs, therefore, seek an order establishing Defendants as
11 constructive trustees of the profits unjustly obtained, plus interest.
12

13 **ALTERNATE STATE LAW COUNTS**

14 500. Each of the state law counts is asserted on behalf of each state law class.
15 So for example, the Alaska counts are asserted on behalf of the Alaska class, and the
16 Illinois counts on behalf of the Illinois class.

17 **ALABAMA**

18 **COUNT I**

19 **VIOLATION OF ALABAMA DECEPTIVE TRADE PRACTICES ACT**
20

21 **(Ala. Code § 8-19-1, et seq.)**

22 501. Plaintiffs reallege and incorporate by reference all paragraphs as though
23 fully set forth herein.

24 502. The conduct of Toyota, as set forth herein, constitutes unfair or
25 deceptive acts or practices, including but not limited to, Toyota's manufacture and
26 sale of vehicles with a sudden acceleration defect that lack brake-override or other
27 effective fail-safe mechanisms, which Toyota failed to adequately investigate,
28

1 disclose and remedy, and its misrepresentations and omissions regarding the safety
2 and reliability of its vehicles.

3 503. Toyota's actions, as set forth above, occurred in the conduct of trade or
4 commerce.

5
6 504. Toyota's actions impact the public interest because Plaintiffs were
7 injured in exactly the same way as millions of others purchasing and/or leasing
8 Toyota vehicles as a result of Toyota's generalized course of deception. All of the
9 wrongful conduct alleged herein occurred, and continues to occur, in the conduct of
10 Toyota's business.

11 505. Plaintiffs and the Class were injured as a result of Defendant's conduct.
12 Plaintiffs overpaid for their Defective Vehicles and did not receive the benefit of
13 their bargain, and their vehicles have suffered a diminution in value.

14
15 506. Toyota's conduct proximately caused the injuries to Plaintiffs and the
16 Class.

17 507. Toyota is liable to Plaintiffs and the Class for damages in amounts to be
18 proven at trial, including attorneys' fees, costs, and treble damages.

19
20 508. Pursuant to ALA. CODE § 8-19-8, Plaintiffs will serve the Alabama
21 Attorney General with a copy of this complaint as Plaintiffs seek injunctive relief.

22 **COUNT II**

23 **BREACH OF EXPRESS WARRANTY**

24 **(Ala. Code § 7-2-313)**

25 509. Plaintiffs reallege and incorporate by reference all paragraphs as though
26 fully set forth herein.
27
28

1 510. Toyota is and was at all relevant times a merchant with respect to motor
2 vehicles.

3 511. In the course of selling its vehicles, Toyota expressly warranted in
4 writing that the vehicles were covered by a Basic Warranty.

5 512. Toyota breached the express warranty to repair and adjust to correct
6 defects in materials and workmanship of any part supplied by Toyota. Toyota has
7 not repaired or adjusted, and has been unable to repair or adjust, the vehicles'
8 materials and workmanship defects.

9
10 513. In addition to this Basic Warranty, Toyota expressly warranted several
11 attributes, characteristics and qualities, as set forth above.

12
13 514. These warranties are only a sampling of the numerous warranties that
14 Toyota made relating to safety, reliability and operation, which are more fully
15 outlined in Section IV.A., *supra*. Generally these express warranties promise
16 heightened, superior, and state-of-the-art safety, reliability, performance standards,
17 and promote the benefits of ETCS. These warranties were made, *inter alia*, in
18 advertisements, in Toyota's "e brochures," and in uniform statements provided by
19 Toyota to be made by salespeople. These affirmations and promises were part of the
20 basis of the bargain between the parties.

21
22 515. These additional warranties were also breached because the Defective
23 Vehicles were not fully operational, safe, or reliable (and remained so even after the
24 problems were acknowledged and a recall "fix" was announced), nor did they
25 comply with the warranties expressly made to purchasers or lessees. Toyota did not
26 provide at the time of sale, and has not provided since then, vehicles conforming to
27 these express warranties.
28

1 516. Furthermore, the limited warranty of repair and/or adjustments to
2 defective parts, fails in its essential purpose because the contractual remedy is
3 insufficient to make the Plaintiffs and the Class whole and because the Defendants
4 have failed and/or have refused to adequately provide the promised remedies within
5 a reasonable time.
6

7 517. Accordingly, recovery by the Plaintiffs is not limited to the limited
8 warranty of repair or adjustments to parts defective in materials or workmanship, and
9 Plaintiffs seek all remedies as allowed by law.

10 518. Also, as alleged in more detail herein, at the time that Defendants
11 warranted and sold the vehicles they knew that the vehicles did not conform to the
12 warranties and were inherently defective, and Defendants wrongfully and
13 fraudulently misrepresented and/or concealed material facts regarding their vehicles.
14 Plaintiffs and the Class were therefore induced to purchase the vehicles under false
15 and/or fraudulent pretenses.
16

17 519. Moreover, many of the damages flowing from the Defective Vehicles
18 cannot be resolved through the limited remedy of “replacement or adjustments,” as
19 those incidental and consequential damages have already been suffered due to
20 Defendants’ fraudulent conduct as alleged herein, and due to their failure and/or
21 continued failure to provide such limited remedy within a reasonable time, and any
22 limitation on Plaintiffs’ and the Class’ remedies would be insufficient to make
23 Plaintiffs and the Class whole.
24

25 520. Finally, due to the Defendants’ breach of warranties as set forth herein,
26 Plaintiffs and the Class assert as an additional and/or alternative remedy, as set forth
27
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1 in ALA. CODE § 7-2-608, for a revocation of acceptance of the goods, and for a return
2 to Plaintiffs and to the Class of the purchase price of all vehicles currently owned.

3 521. Toyota was provided notice of these issues by numerous complaints
4 filed against it, including the instant complaint, and by numerous individual letters
5 and communications sent by Plaintiffs and members of the Class before or within a
6 reasonable amount of time after Toyota issued the recall and the allegations of
7 vehicle defects became public.
8

9 522. As a direct and proximate result of Toyota's breach of express
10 warranties, Plaintiffs and the Class have been damaged in an amount to be
11 determined at trial.
12

13 **COUNT III**

14 **BREACH OF THE IMPLIED WARRANTY OF MERCHANTABILITY**

15 **(Ala. Code § 7-2-314)**

16 523. Plaintiffs reallege and incorporate by reference all paragraphs as though
17 fully set forth herein.

18 524. Toyota is and was at all relevant times a merchant with respect to motor
19 vehicles.
20

21 525. A warranty that the Defective Vehicles were in merchantable condition
22 is implied by law in the instant transactions, pursuant to ALA. CODE § 7-2-314.

23 526. These Defective Vehicles, when sold and at all times thereafter, were
24 not in merchantable condition and are not fit for the ordinary purpose for which cars
25 are used. Specifically, the Defective Vehicles are inherently defective in that there
26 are defects in the vehicle control systems that permit sudden unintended acceleration
27 to occur; the Defective Vehicles do not have an adequate fail-safe to protect against
28

1 such SUA events, nor do they have a brake-override; and the ETCS system was not
2 adequately tested.

3 527. Toyota was provided notice of these issues by numerous complaints
4 filed against it, including the instant complaint, and by numerous individual letters
5 and communications sent by Plaintiffs and members of the Class before or within a
6 reasonable amount of time after Toyota issued the recall and the allegations of
7 vehicle defects became public.
8

9 528. Plaintiffs and the Class have had sufficient dealings with either the
10 Defendants or their agents (dealerships) to establish privity of contract between
11 Plaintiffs and the Class. Notwithstanding this, privity is not required in this case
12 because Plaintiffs and the Class are intended third-party beneficiaries of contracts
13 between Toyota and its dealers; specifically, they are the intended beneficiaries of
14 Toyota's implied warranties. The dealers were not intended to be the ultimate
15 consumers of the Defective Vehicles and have no rights under the warranty
16 agreements provided with the Defective Vehicles; the warranty agreements were
17 designed for and intended to benefit the ultimate consumers only. Finally, privity is
18 also not required because Plaintiffs' and Class members' Toyotas are dangerous
19 instrumentalities due to the aforementioned defects and nonconformities.
20
21

22 529. As a direct and proximate result of Toyota's breach of the warranties of
23 merchantability, Plaintiffs and the Class have been damaged in an amount to be
24 proven at trial.
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COUNT IV

REVOCATION OF ACCEPTANCE

(Ala. Code § 7-2-608)

530. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

531. Plaintiffs identified above demanded revocation and the demands were refused.

532. Plaintiffs and the Class had no knowledge of such defects and nonconformities, were unaware of these defects, and reasonably could not have discovered them when they purchased or leased their automobiles from Toyota. On the other hand, Toyota was aware of the defects and nonconformities at the time of sale and thereafter.

533. Acceptance was reasonably induced by the difficulty of discovery of the defects and nonconformities before acceptance.

534. There has been no change in the condition of Plaintiffs' vehicles not caused by the defects and nonconformities.

535. When Plaintiffs sought to revoke acceptance, Toyota refused to accept return of the Defective Vehicles and to refund Plaintiffs' purchase price and monies paid.

536. Plaintiffs and the Class would suffer economic hardship if they returned their vehicles but did not receive the return of all payments made by them. Because Toyota is refusing to acknowledge any revocation of acceptance and return immediately any payments made, Plaintiffs and the Class have not re-accepted their Defective Vehicles by retaining them.

1 537. These defects and nonconformities substantially impaired the value of
2 the Defective Vehicles to Plaintiffs and the Class. This impairment stems from two
3 basic sources. First, the Defective Vehicles fail in their essential purpose because
4 they present an unreasonably high risk of sudden unintended acceleration (a risk
5 acknowledged by Toyota's recall), rendering them unsafe in a very material way.
6 Second, the repair and adjust warranty has failed of its essential purpose because
7 Toyota cannot repair or adjust the Defective Vehicles.
8

9 538. Plaintiffs and the Class provided notice of their intent to seek revocation
10 of acceptance by a class-action lawsuit seeking such relief. In addition, Plaintiffs
11 (and many Class members) have requested that Toyota accept return of their vehicles
12 and return all payments made. Plaintiffs on behalf of themselves and the Class
13 hereby demand revocation and tender their Defective Vehicles.
14

15 539. Plaintiffs and the Class would suffer economic hardship if they returned
16 their vehicles but did not receive the return of all payments made by them. Because
17 Toyota is refusing to acknowledge any revocation of acceptance and return
18 immediately any payments made, Plaintiffs and the Class have not re-accepted their
19 Defective Vehicles by retaining them, as they must continue using them due to the
20 financial burden of securing alternative means of transport for an uncertain and
21 substantial period of time.
22

23 540. Finally, due to the Defendants' breach of warranties as set forth herein,
24 Plaintiffs and the Class assert as an additional and/or alternative remedy, as set forth
25 in ALA. CODE § 7-2-608, for a revocation of acceptance of the goods, and for a return
26 to Plaintiffs and to the Class of the purchase price of all vehicles currently owned.
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1 541. Consequently, Plaintiffs and the Class are entitled to revoke their
2 acceptances, receive all payments made to Toyota, and to all incidental and
3 consequential damages, including the costs associated with purchasing safer vehicles,
4 and all other damages allowable under law, all in amounts to be proven at trial.
5

6 **COUNT V**

7 **BREACH OF CONTRACT/COMMON LAW WARRANTY**

8 **(Based On Alabama Law)**

9 542. Plaintiffs reallege and incorporate by reference all paragraphs as though
10 fully set forth herein.

11 543. To the extent Toyota's repair or adjust commitment is deemed not to be
12 a warranty under Alabama's Commercial Code, Plaintiffs plead in the alternative
13 under common law warranty and contract law. Toyota limited the remedies
14 available to Plaintiffs and the Class to just repairs and adjustments needed to correct
15 defects in materials or workmanship of any part supplied by Toyota, and/or
16 warranted the quality or nature of those services to Plaintiffs.
17

18 544. Toyota breached this warranty or contract obligation by failing to repair
19 the Defective Vehicles evidencing a sudden unintended acceleration problem,
20 including those that were recalled, or to replace them.
21

22 545. As a direct and proximate result of Defendants' breach of contract or
23 common law warranty, Plaintiffs and the Class have been damaged in an amount to
24 be proven at trial, which shall include, but is not limited to, all compensatory
25 damages, incidental and consequential damages, and other damages allowed by law.
26
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COUNT VI
FRAUD BY CONCEALMENT
(Based On Alabama Law)

546. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

547. As set forth above, Defendants concealed and/or suppressed material facts concerning the safety of their vehicles.

548. Defendants had a duty to disclose these safety issues because they consistently marketed their vehicles as safe and proclaimed that safety is one of Toyota's highest corporate priorities. Once Defendants made representations to the public about safety, Defendants were under a duty to disclose these omitted facts, because where one does speak one must speak the whole truth and not conceal any facts which materially qualify those facts stated. One who volunteers information must be truthful, and the telling of a half-truth calculated to deceive is fraud.

549. In addition, Defendants had a duty to disclose these omitted material facts because they were known and/or accessible only to Defendants who have superior knowledge and access to the facts, and Defendants knew they were not known to or reasonably discoverable by Plaintiffs and the Class. These omitted facts were material because they directly impact the safety of the Defective Vehicles. Whether or not a vehicle accelerates only at the driver's command, and whether a vehicle will stop or not upon application of the brake by the driver, are material safety concerns. Defendants possessed exclusive knowledge of the defects rendering the Defective Vehicles inherently more dangerous and unreliable than similar vehicles.

1 550. Defendants actively concealed and/or suppressed these material facts, in
2 whole or in part, with the intent to induce Plaintiffs and the Class to purchase the
3 Defective Vehicles at a higher price for the vehicles, which did not match the
4 vehicles' true value.

5 551. Defendants still have not made full and adequate disclosure and
6 continue to defraud Plaintiffs and the Class.
7

8 552. Plaintiffs and the Class were unaware of these omitted material facts
9 and would not have acted as they did if they had known of the concealed and/or
10 suppressed facts. Plaintiffs' and the Class' actions were justified. Defendants were
11 in exclusive control of the material facts and such facts were not known to the public
12 or the Class.
13

14 553. As a result of the concealment and/or suppression of the facts, Plaintiffs
15 and the Class sustained damage. For those Plaintiffs and the Class who elect to
16 affirm the sale, these damages, include the difference between the actual value of
17 that which Plaintiffs and the Class paid and the actual value of that which they
18 received, together with additional damages arising from the sales transaction,
19 amounts expended in reliance upon the fraud, compensation for loss of use and
20 enjoyment of the property, and/or lost profits. For those Plaintiffs and the Class who
21 want to rescind the purchase, then those Plaintiffs and the Class are entitled to
22 restitution and consequential damages.
23

24 554. Defendants' acts were done maliciously, oppressively, deliberately, with
25 intent to defraud, and in reckless disregard of Plaintiffs' and the Class' rights and
26 well-being to enrich Defendants. Defendants' conduct warrants an assessment of
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1 punitive damages in an amount sufficient to deter such conduct in the future, which
2 amount is to be determined according to proof.

3
4 **COUNT VII**
5 **UNJUST ENRICHMENT**
6 **(Based On Alabama Law)**

7 555. Plaintiffs reallege and incorporate by reference all paragraphs as though
8 fully set forth herein.

9 556. Toyota had knowledge of the safety defects in its vehicles, which it
10 failed to disclose to Plaintiffs and the Class.

11 557. As a result of their wrongful and fraudulent acts and omissions, as set
12 forth above, pertaining to the design defect of their vehicles and the concealment of
13 the defect, Toyota charged a higher price for their vehicles than the vehicles' true
14 value and Toyota obtained monies which rightfully belong to Plaintiffs and the Class.

15 558. Toyota appreciated, accepted and retained the non-gratuitous benefits
16 conferred by Plaintiffs and the Class, who without knowledge of the safety defects
17 paid a higher price for vehicles which actually had lower values. It would be
18 inequitable and unjust for Toyota to retain these wrongfully obtained profits.
19

20 559. Plaintiffs, therefore, are entitled to restitution and seek an order
21 establishing Toyota as constructive trustees of the profits unjustly obtained, plus
22 interest.
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1 **ALASKA**

2 **COUNT I**

3 **VIOLATION OF THE ALASKA UNFAIR TRADE PRACTICES**
4 **AND CONSUMER PROTECTION ACT**

5 **(Alaska Stat. § 45.50.471, *et seq.*)**

6 560. Plaintiffs reallege and incorporate by reference all paragraphs as though
7 fully set forth herein.

8 561. The Alaska Unfair Trade Practices And Consumer Protection Act
9 (“AUTPCPA”) declares unfair methods of competition and unfair or deceptive acts or
10 practices in the conduct of trade or commerce unlawful, including: “(4) representing
11 that goods or services have sponsorship, approval, characteristics, ingredients, uses,
12 benefits, or quantities that they do not have or that a person has a sponsorship,
13 approval, status, affiliation, or connection that the person does not have”;
14 “(6) representing that goods or services are of a particular standard, quality, or grade,
15 or that goods are of a particular style or model, if they are of another”; “(8) advertising
16 goods or services with intent not to sell them as advertised”; “(12) using or employing
17 deception, fraud, false pretense, false promise, misrepresentation, or knowingly
18 concealing, suppressing, or omitting a material fact with intent that others rely upon
19 the concealment, suppression or omission in connection with the sale or advertisement
20 of goods or services whether or not a person has in fact been misled, deceived or
21 damaged”; and “(14) representing that an agreement confers or involves rights,
22 remedies, or obligations which it does not confer or involve, or which are prohibited
23 by law.” ALASKA STAT. § 45.50.471.
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1 562. In the course of Toyota's business, it willfully failed to disclose and
2 actively concealed the dangerous risk of throttle control failure and the lack of
3 adequate fail-safe mechanisms in the Defective Vehicles equipped with ETCS as
4 described above. Accordingly, Toyota engaged in unlawful trade practices, including
5 representing that the Defective Vehicles have characteristics, uses, benefits, and
6 qualities which they do not have; representing that the Defective Vehicles are of a
7 particular standard and quality when they are not; advertising the Defective Vehicles
8 with the intent not to sell them as advertised; omitting material facts in describing the
9 Defective Vehicles; and representing that its warranties confers or involves rights,
10 remedies, or obligations which it does not confer or involve, or which are prohibited
11 by law.
12

13
14 563. Toyota's misrepresentations and omissions described herein have the
15 capacity or tendency to deceive. As a result of these unlawful trade practices,
16 Plaintiffs have suffered ascertainable loss.

17 564. Plaintiffs and the Class suffered ascertainable loss caused by Toyota's
18 failure to disclose material information. Plaintiffs and the Class overpaid for their
19 vehicles and did not receive the benefit of their bargain. The value of their Toyota's
20 has diminished now that the safety issues have come to light, and Plaintiffs and the
21 Class own vehicles that are not safe.
22

23 565. Plaintiffs are entitled to recover the greater of three times the actual
24 damages or \$500, pursuant to § 45.50.531(a). Attorneys' fees may also be awarded
25 to the prevailing party pursuant to § 45.50.531(g).
26
27
28

COUNT II

BREACH OF THE IMPLIED WARRANTY OF MERCHANTABILITY

(Alaska Stat. § 45.02.314)

566. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

567. Toyota is and was at all relevant times a merchant with respect to motor vehicles.

568. A warranty that the Defective Vehicles were in merchantable condition is implied by law in the instant transactions.

569. These vehicles, when sold and at all times thereafter, were not in merchantable condition and are not fit for the ordinary purpose for which cars are used. As set forth above in detail, the Defective Vehicles are inherently defective in that there are defects in the vehicle control systems that permit sudden unintended acceleration to occur; the Defective Vehicles do not have an adequate fail-safe to protect against such SUA events, nor do they have a brake-override; and the ETCS system was not adequately tested.

570. Toyota was provided notice of these issues by numerous complaints filed against it, including the instant complaint, and by numerous individual letters and communications sent by Plaintiffs and the Class before or within a reasonable amount of time after Toyota issued the recall and the allegations of vehicle defects became public.

571. As a direct and proximate result of Toyota's breach of the warranties of merchantability, Plaintiffs and the Class have been damaged in an amount to be proven at trial.

COUNT III

REVOCATION OF ACCEPTANCE

(Alaska Stat. § 45.02.608)

572. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

573. Plaintiffs identified above demanded revocation and the demands were refused.

574. Plaintiffs and the Class had no knowledge of such defects and nonconformities, were unaware of these defects, and reasonably could not have discovered them when they purchased or leased their automobiles from Toyota. On the other hand, Toyota was aware of the defects and nonconformities at the time of sale and thereafter.

575. Acceptance was reasonably induced by the difficulty of discovery of the defects and nonconformities before acceptance.

576. There has been no change in the condition of Plaintiffs' vehicles not caused by the defects and nonconformities.

577. When Plaintiffs sought to revoke acceptance, Toyota refused to accept return of the Defective Vehicles and to refund Plaintiffs' purchase price and monies paid.

578. Plaintiffs and the Class would suffer economic hardship if they returned their vehicles but did not receive the return of all payments made by them. Because Toyota is refusing to acknowledge any revocation of acceptance and return immediately any payments made, Plaintiffs and the Class have not re-accepted their Defective Vehicles by retaining them.

1 579. These defects and nonconformities substantially impaired the value of
2 the Defective Vehicles to Plaintiffs and the Class. This impairment stems from two
3 basic sources. First, the Defective Vehicles fail in their essential purpose because
4 they present an unreasonably high risk of sudden unintended acceleration (a risk
5 acknowledged by Toyota's recall), rendering them unsafe in a very material way.
6 Second, the repair and adjust warranty has failed of its essential purpose because
7 Toyota cannot repair or adjust the Defective Vehicles.
8

9 580. Plaintiffs and the Class provided notice of their intent to seek revocation
10 of acceptance by a class-action lawsuit seeking such relief. In addition, Plaintiffs
11 (and many Class members) have requested that Toyota accept return of their vehicles
12 and return all payments made. Plaintiffs on behalf of themselves and the Class
13 hereby demand revocation and tender their Defective Vehicles.
14

15 581. Finally, due to the Defendants' breach of warranties as set forth herein,
16 Plaintiffs and the Class assert as an additional and/or alternative remedy, as set forth
17 in ALASKA STAT. § 45.02.608, for a revocation of acceptance of the goods, and for a
18 return to Plaintiffs and to the Class of the purchase price of all vehicles currently
19 owned.
20

21 582. Consequently, Plaintiffs and the Class are entitled to revoke their
22 acceptances, receive all payments made to Toyota, and to all incidental and
23 consequential damages, including the costs associated with purchasing safer vehicles,
24 and all other damages allowable under law, all in amounts to be proven at trial.
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COUNT IV

UNJUST ENRICHMENT

(Based On Alaska Law)

583. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

584. Toyota had knowledge of the safety defects in its vehicles, which it failed to disclose to Plaintiffs and the Class.

585. As a result of their wrongful and fraudulent acts and omissions, as set forth above, pertaining to the design defect of their vehicles and the concealment of the defect, Toyota charged a higher price for their vehicles than the vehicles' true value and Toyota obtained monies which rightfully belong to Plaintiffs.

586. Toyota appreciated, accepted and retained the non-gratuitous benefits conferred by Plaintiffs and the Class, who without knowledge of the safety defects paid a higher price for vehicles which actually had lower values. It would be inequitable and unjust for Toyota to retain these wrongfully obtained profits.

587. Plaintiffs, therefore, are entitled to restitution and seek an order establishing Toyota as constructive trustees of the profits unjustly obtained, plus interest.

ARIZONA

COUNT I

BREACH OF THE IMPLIED WARRANTY OF MERCHANTABILITY

(Arizona Common Law)

588. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein. Only Plaintiffs with physical injury to their vehicles assert this claim.

589. Toyota is and was at all relevant times a merchant with respect to motor vehicles.

590. A warranty that the Defective Vehicles were in merchantable condition is implied by common law in the instant transactions.

591. These vehicles, when sold and at all times thereafter, were not in merchantable condition and are not fit for the ordinary purpose for which cars are used. Specifically, the Defective Vehicles are inherently defective in that there are defects in the vehicle control systems that permit sudden unintended acceleration to occur; the Defective Vehicles do not have an adequate fail-safe to protect against such SUA events, nor do they have a brake-override; and the ETCS system was not adequately tested.

592. Toyota was provided notice of these issues by numerous complaints filed against it, including the instant complaint, and by numerous individual letters and communications sent by Plaintiffs and the Class before or within a reasonable amount of time after Toyota issued the recall and the allegations of vehicle defects became public.

1 593. As a direct and proximate result of Toyota's breach of the warranties of
2 merchantability, Plaintiffs and the Class have suffered damage to the property of
3 their vehicles, in an amount to be proven at trial. Alternatively, Plaintiffs and the
4 Class seek rescission.

5
6 **COUNT II**
7 **IN THE ALTERNATIVE, UNJUST ENRICHMENT**
8 **(Based On Arizona Law)**

9 594. Plaintiffs reallege and incorporate by reference all paragraphs as though
10 fully set forth herein.

11 595. Toyota had knowledge of the safety defects in its vehicles, which it
12 failed to disclose to Plaintiffs and the Class.

13 596. As a result of their wrongful and fraudulent acts and omissions, as set
14 forth above, pertaining to the design defect of their vehicles and the concealment of
15 the defect, Toyota charged a higher price for their vehicles than the vehicles' true
16 value and Toyota obtained monies which rightfully belong to Plaintiffs.

17 597. Toyota appreciated, accepted and retained the benefits conferred by
18 Plaintiffs and the Class, who without knowledge of the safety defects paid a higher
19 price for vehicles which actually had lower values. It would be inequitable and
20 unjust for Toyota to retain these wrongfully obtained profits. There is no
21 justification for Plaintiffs' and the Class' impoverishment and Toyota's related
22 enrichment.

23 598. Plaintiffs, therefore, are entitled to restitution and seek an order
24 establishing Toyota as constructive trustees of the profits unjustly obtained, plus
25 interest.
26
27
28

1 Vehicles, including, but not limited to, Plaintiffs, and willfully failing to recall or
2 otherwise cure one or more of the defects in the products involved thereby directly
3 and proximately causing the hereinafter described injury.

4 605. The Defective Vehicles were unsafe for use by reason of the fact that
5 they were defective. For example, the Defective Vehicles were defective in their
6 design, guarding, development, manufacture, and lack of permanent, accurate,
7 adequate and fair warning of the characteristics, danger and hazard to the user,
8 prospective user and members of the general public, including, but not limited to,
9 Plaintiffs, and because Defendants failed to recall or otherwise cure one or more
10 defects in the vehicles involved thereby directly and proximately causing the
11 described injuries.
12

13 606. Defendants, and each of them, knew or reasonably should have known
14 that the Defective Vehicles would be purchased and used without all necessary
15 testing or inspection for defects by the Plaintiffs and the Class.
16

17 607. Plaintiffs were not aware of those defects at any time before the incident
18 and occurrence mentioned in this complaint, or else Plaintiffs were unable, as a
19 practical matter, to cure that defective condition.
20

21 608. Plaintiffs used the products in a foreseeable manner.

22 609. As a proximate result of the negligence of Defendants, Plaintiffs
23 suffered injuries and damages.
24
25
26
27
28

COUNT II

BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY

(Ark. Code Ann. §§ 4-2-314)

610. Plaintiffs incorporate the allegations set forth above as is fully set forth herein.

611. In its manufacture and sale of the Defective Vehicles, Toyota impliedly warranted to Plaintiffs and the Class that its vehicles were in merchantable condition and fit for their ordinary purpose.

612. The Defective Vehicles were defective and unfit for their ordinary use due to their tendency to accelerate suddenly and dangerously out of the driver's control and lack of a fail-safe mechanism.

613. Under the Uniform Commercial Code there exists an implied warranty of merchantability.

614. Toyota has breached the warranty of merchantability by having sold its automobiles with defects such that the vehicles were not fit for their ordinary purpose and Plaintiffs and the Class suffered damages as a result.

COUNT III

NEGLIGENCE

(Under Arkansas Law)

615. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

616. Plaintiffs are the owners of Toyota vehicles that were manufactured, assembled, designed, assembled, distributed and otherwise placed in the stream of commerce by Defendants.

1 617. Toyota had a duty to manufacture a product which would be safe for its
2 intended and foreseeable uses and users, including the use to which it was put by
3 Plaintiffs. Toyota breached its duty to Plaintiffs and the Class because it was
4 negligent in the design, development, manufacture, and testing of the Defective
5 Vehicles.
6

7 618. Toyota was negligent in its design, development, manufacture, and
8 testing of the Defective Vehicles because it knew, or in the exercise of reasonable
9 care should have known, that they were prone to sudden and dangerous acceleration
10 and lacked proper fail-safe mechanisms.
11

12 619. Toyota negligently failed to adequately warn and instruct Plaintiffs and
13 the Class of the defective nature of the Defective Vehicles, of the high degree of risk
14 attendant to using them, given that Plaintiffs are Class members and would be
15 ignorant of the said defective.
16

17 620. Whereupon, the Plaintiff respectfully relies upon the RESTATEMENT,
18 SECOND, TORTS 395.
19

20 621. Toyota further breached its duties to Plaintiffs by supplying directly
21 and/or through a third person to be used by such foreseeable persons such as
22 Plaintiffs when:
23

24 a. Toyota knew or had reason to know, that the Defective Vehicles
25 were dangerous or were likely to be dangerous for the use for which they were
26 supplied; and
27

28 b. Toyota failed to exercise reasonable care to inform customers of
the dangerous condition, or of the facts under which the Defective Vehicles are
likely to be dangerous.

1 622. As a result of Toyota's negligence, Plaintiffs and the Class suffered
2 damages.

3
4 **COUNT IV**
5 **REVOCATION OF ACCEPTANCE**
6 **(Ark. Code Ann. § 4-2-608)**

7 623. Plaintiffs reallege and incorporate by reference all paragraphs as though
8 fully set forth herein.

9 624. Plaintiffs identified above demanded revocation and the demands were
10 refused.

11 625. Plaintiffs and the Class had no knowledge of such defects and
12 nonconformities, were unaware of these defects, and reasonably could not have
13 discovered them when they purchased or leased their automobiles from Toyota. On
14 the other hand, Toyota was aware of the defects and nonconformities at the time of
15 sale and thereafter.

16
17 626. Acceptance was reasonably induced by the difficulty of discovery of the
18 defects and nonconformities before acceptance.

19 627. There has been no change in the condition of Plaintiffs' vehicles not
20 caused by the defects and nonconformities.

21
22 628. When Plaintiffs sought to revoke acceptance, Toyota refused to accept
23 return of the Defective Vehicles and to refund Plaintiffs' purchase price and monies
24 paid.

25 629. Plaintiffs and the Class would suffer economic hardship if they returned
26 their vehicles but did not receive the return of all payments made by them. Because
27 Toyota is refusing to acknowledge any revocation of acceptance and return
28

1 immediately any payments made, Plaintiffs and the Class have not re-accepted their
2 Defective Vehicles by retaining them.

3 630. These defects and nonconformities substantially impaired the value of
4 the Defective Vehicles to Plaintiffs and the Class. This impairment stems from two
5 basic sources. First, the Defective Vehicles fail in their essential purpose because
6 they present an unreasonably high risk of sudden unintended acceleration (a risk
7 acknowledged by Toyota's recall), rendering them unsafe in a very material way.
8 Second, the repair and adjust warranty has failed of its essential purpose because
9 Toyota cannot repair or adjust the Defective Vehicles.
10

11 631. Plaintiffs and the Class provided notice of their intent to seek revocation
12 of acceptance by a class-action lawsuit seeking such relief. In addition, Plaintiffs
13 (and many Class members) have requested that Toyota accept return of their vehicles
14 and return all payments made. Plaintiffs on behalf of themselves and the Class
15 hereby demand revocation and tender their Defective Vehicles.
16

17 632. Plaintiffs and the Class would suffer economic hardship if they returned
18 their vehicles but did not receive the return of all payments made by them. Because
19 Toyota is refusing to acknowledge any revocation of acceptance and return
20 immediately any payments made, Plaintiffs and the Class have not re-accepted their
21 Defective Vehicles by retaining them, as they must continue using them due to the
22 financial burden of securing alternative means of transport for an uncertain and
23 substantial period of time.
24

25 633. Finally, due to the Defendants' breach of warranties as set forth herein,
26 Plaintiffs and the Class assert as an additional and/or alternative remedy, as set forth
27 in A.C.A. § 4-2-608, for a revocation of acceptance of the goods, and for a return to
28

1 Plaintiffs and the Class of the purchase price of all vehicles currently owned and for
2 such other incidental and consequential damages as allowed under A.C.A. § 4-2-
3 714(2)-(3).

4 634. Consequently, Plaintiffs and the Class are entitled to revoke their
5 acceptances, receive all payments made to Toyota, and to all incidental and
6 consequential damages, including the costs associated with purchasing safer vehicles,
7 and all other damages allowable under law, all in amounts to be proven at trial.

9 **COUNT V**

10 **NEGLIGENT MISREPRESENTATION/FRAUD**

11 **(Ark. Code Ann. § 4-2-721)**

12 635. Plaintiffs reallege and incorporate by reference all paragraphs as though
13 fully set forth herein.

14 636. As set forth above, Defendants concealed and/or suppressed material
15 facts concerning the safety of their vehicles.

16 637. Defendants had a duty to disclose these safety issues because they
17 consistently marketed their vehicles as safe and proclaimed that safety is one of
18 Toyota's highest corporate priorities. Once Defendants made representations to the
19 public about safety, Defendants were under a duty to disclose these omitted facts,
20 because where one does speak one must speak the whole truth and not conceal any
21 facts which materially qualify those facts stated. One who volunteers information
22 must be truthful, and the telling of a half-truth calculated to deceive is fraud.

23 638. In addition, Defendants had a duty to disclose these omitted material
24 facts because they were known and/or accessible only to Defendants who have
25 superior knowledge and access to the facts, and Defendants knew they were not
26
27
28

1 known to or reasonably discoverable by Plaintiffs and the Class. These omitted facts
2 were material because they directly impact the safety of the Defective Vehicles.
3 Whether or not a vehicle accelerates only at the driver's command, and whether a
4 vehicle will stop or not upon application of the brake by the driver, are material
5 safety concerns. Defendants possessed exclusive knowledge of the defects rendering
6 the Defective Vehicles inherently more dangerous and unreliable than similar
7 vehicles.
8

9 639. Defendants actively concealed and/or suppressed these material facts, in
10 whole or in part, with the intent to induce Plaintiffs and the Class to purchase the
11 Defective Vehicles at a higher price for the vehicles, which did not match the
12 vehicles' true value.
13

14 640. Defendants still have not made full and adequate disclosure and
15 continue to defraud Plaintiffs and the Class.

16 641. Plaintiffs and the Class were unaware of these omitted material facts
17 and would not have acted as they did if they had known of the concealed and/or
18 suppressed facts. Plaintiffs' and the Class' actions were justified. Defendants were
19 in exclusive control of the material facts and such facts were not known to the public
20 or the Class.
21

22 642. As a result of the misrepresentation concealment and/or suppression of
23 the facts, Plaintiffs and the Class sustained damage. For those Plaintiffs and the
24 Class who elect to affirm the sale, these damages, pursuant to A.C.A. § 4-2-72,
25 include the difference between the actual value of that which Plaintiffs and the Class
26 paid and the actual value of that which they received, together with additional
27 damages arising from the sales transaction, amounts expended in reliance upon the
28

1 fraud, compensation for loss of use and enjoyment of the property, and/or lost
2 profits. For those Plaintiffs and the Class who want to rescind the purchase, then
3 those Plaintiffs and the Class are entitled to restitution and consequential damages
4 pursuant to A.C.A. § 4-2-72.
5

6 643. Defendants' acts were done maliciously, oppressively, deliberately, with
7 intent to defraud, and in reckless disregard of Plaintiffs' and the Class' rights and
8 well-being to enrich Defendants. Defendants' conduct warrants an assessment of
9 punitive damages in an amount sufficient to deter such conduct in the future, which
10 amount is to be determined according to proof.
11

12 **COUNT VI**

13 **UNJUST ENRICHMENT**

14 **(Based On Arkansas Law)**

15 644. Plaintiffs reallege and incorporate by reference all paragraphs as though
16 fully set forth herein.

17 645. As a result of their wrongful and fraudulent acts and omissions, as set
18 forth above, pertaining to the design defect of their vehicles and the concealment of
19 the defect, Defendants charged a higher price for their vehicles than the vehicles'
20 true value and Defendants obtained monies which rightfully belong to Plaintiffs.
21

22 646. Defendants enjoyed the benefit of increased financial gains, to the
23 detriment of Plaintiffs and the Class, who paid a higher price for vehicles which
24 actually had lower values. It would be inequitable and unjust for Defendants to
25 retain these wrongfully obtained profits.
26

27 647. Plaintiffs, therefore, seek an order establishing Defendants as
28 constructive trustees of the profits unjustly obtained, plus interest.

CALIFORNIA

COUNT I

**VIOLATION OF THE SONG-BEVERLY CONSUMER WARRANTY ACT
FOR BREACH OF EXPRESS WARRANTIES**

(Cal. Civ. Code §§ 1793.2(D) & 1791.2)

648. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

649. Plaintiffs and the Class who purchased the Toyota vehicles in California are “buyers” within the meaning of CAL. CIV. CODE § 1791.

a. The Toyota vehicles are “consumer goods” within the meaning of CAL. CIV. CODE § 1791(a).

650. Toyota is a “manufacturer” of the Toyota vehicles within the meaning of CAL. CIV. CODE § 1791(j).

651. Plaintiffs and the Class bought/leased new motor vehicles manufactured by Toyota.

652. Toyota made express warranties to Plaintiffs and the Class within the meaning of CAL. CIV. CODE §§ 1791.2 and 1793.2, both in its warranty manual and advertising, as described above.

653. Toyota’s vehicles had and continue to have sudden unintended acceleration and lack of brake fail-safe mechanism defects that were and continue to be covered by Toyota’s express warranties and these defects substantially impair the use, value, and safety of Toyota’s vehicles to reasonable consumers like Plaintiffs and the Class.

1 654. Plaintiffs and the Class delivered their vehicles to Toyota or its
2 authorized repair facility for repair of the defects and/or notified Toyota in writing of
3 the need for repair of the defects because they reasonably could not deliver the
4 vehicles to Toyota or its authorized repair facility due to fear of unintended
5 acceleration.
6

7 655. Toyota and its authorized repair facilities failed and continue to fail to
8 repair the vehicles to match Toyota's written warranties after a reasonable number of
9 opportunities to do so.

10 656. Plaintiffs and the Class gave Toyota or its authorized repair facilities at
11 least two opportunities to fix the defects unless only one repair attempt was possible
12 because the vehicle was later destroyed or because Toyota or its authorized repair
13 facility refused to attempt the repair.
14

15 657. Toyota did not promptly replace or buy back the vehicles of Plaintiffs
16 and the Class.

17 658. As a result of Toyota's breach of its express warranties, Plaintiffs and
18 the Class received goods whose dangerous condition substantially impairs their value
19 to Plaintiffs and the Class. Plaintiffs and the Class have been damaged as a result of
20 the diminished value of the Defendants' products, the products' malfunctioning, and
21 the nonuse of their vehicles.
22

23 659. Pursuant to CAL. CIV. CODE §§ 1793.2 & 1794, Plaintiffs and the Class
24 are entitled to damages and other legal and equitable relief including, at their
25 election, the purchase price of their vehicles, or the overpayment or diminution in
26 value of their vehicles.
27
28

COUNT II

(Cal. Civ. Code §§ 1792 & 1791.1)

662. Plaintiffs and the Class who purchased the Toyota vehicles in California are “buyers” within the meaning of CAL. CIV. CODE § 1791.

664. Toyota is a “manufacturer” of the Toyota vehicles within the meaning of CAL. CIV. CODE § 1791(j).

666. CAL. CIV. CODE § 1791.1(a) states:

(1) Pass without objection in the trade under the contract description.

(2) Are fit for the ordinary purposes for which such goods are used.

(3) Are adequately contained, packaged, and labeled.

(4) Conform to the promises or affirmations of fact made on the container or label.

667. The Toyota vehicles would not pass without objection in the automotive trade because of the sudden acceleration and lack of a brake fail-safe mechanism defects.

668. Because of the sudden acceleration and lack of a brake fail-safe mechanism defects, they are not safe to drive and thus not fit for ordinary purposes.

669. The vehicles are not adequately labeled because the labeling fails to disclose the sudden acceleration and lack of a brake fail-safe mechanism defects.

670. Toyota breached the implied warranty of merchantability by manufacturing and selling vehicles containing a sudden acceleration and lack of a brake fail-safe mechanism defects. Furthermore, these defects have caused Plaintiffs and the Class to not receive the benefit of their bargain and have caused vehicles to depreciate in value.

671. As a direct and proximate result of Toyota's breach of the implied warranty of merchantability, Plaintiffs and the Class received goods whose dangerous condition substantially impairs their value to Plaintiffs and the Class. Plaintiffs and the Class have been damaged as a result of the diminished value of Toyota's products, the products' malfunctioning, and the nonuse of their vehicles.

672. Pursuant to CAL. CIV. CODE §§ 1791.1(d) & 1794, Plaintiffs and the Class are entitled to damages and other legal and equitable relief including, at their

1 election, the purchase price of their vehicles, or the overpayment or diminution in
2 value of their vehicles.

3 673. Pursuant to CAL. CIV. CODE § 1794, Plaintiffs and the Class are entitled
4 to costs and attorneys' fees.
5

6 **COLORADO**

7 **COUNT I**

8 **VIOLATIONS OF THE COLORADO CONSUMER PROTECTION ACT**

9 **(Col. Rev. Stat. § 6-1-101. et seq.)**

10 674. Plaintiffs incorporate the allegations set forth above as if fully set forth
11 herein.
12

13 675. Defendants are "persons" under § 6-1-102(6) of the Colorado Consumer
14 Protection Act ("Colorado CPA"), COL. REV. STAT. § 6-1-101 *et seq.*

15 676. Plaintiffs are "consumers" for purposes of § 6-1-113(1)(a) of the
16 Colorado CPA who purchased or leased one or more Defective Vehicles.

17 677. In the course of their business, Defendants both participated in
18 deceptive trade practices that violated the Colorado CPA, as described above and
19 below. Defendants each are directly liable for these violations of law. TMC also is
20 liable for TMS's violations of the Colorado CPA because TMS acts as TMC's
21 general agent in the United States for purposes of sales and marketing.
22

23 678. As alleged above, Defendants made numerous material statements about
24 the safety and reliability of the Defective Vehicles that were either false or
25 misleading. Each of these statements contributed to the deceptive context of
26 Defendants' unlawful advertising and representations as a whole. Defendants also
27 failed to disclose and actively concealed the dangerous risk of throttle control failure
28

1 and the lack of adequate fail-safe mechanisms in the Defective Vehicles equipped
2 with ETCS.

3 679. Defendants engaged in deceptive trade practices prohibited by the
4 Colorado CPA, including (1) knowingly making a false representation as to the
5 characteristics, uses, and benefits of the Defective Vehicles that had the capacity or
6 tendency to deceive Plaintiffs; (2) representing that the Defective Vehicles are of a
7 particular standard, quality, and grade even though Defendants knew or should have
8 known they are not; (3) advertising the Defective Vehicles with the intent not to sell
9 them as advertised; and (4) failing to disclose material information concerning the
10 Defective Vehicles that was known to Defendants at the time of advertisement or sale
11 with the intent to induce Plaintiffs to purchase or lease the Defective Vehicles.
12

13
14 680. Defendants knew that the ETCS in the Defective Vehicles was
15 defectively designed or manufactured, would fail without warning, and was not
16 suitable for its intended use of regulating throttle position and vehicle speed based on
17 driver commands. Defendants nevertheless failed to warn Plaintiffs about these
18 inherent dangers despite having a duty to do so.
19

20 681. Defendants' practices significantly the public as actual consumers of the
21 Defective Vehicles, which pose an unreasonable risk of death or serious bodily injury
22 to Plaintiffs, passengers, other motorists, pedestrians, and the public at large, because
23 they are susceptible to incidents of sudden unintended acceleration.

24 682. Whether or not a vehicle (a) accelerates only when commanded to do so
25 and (b) decelerates and stops when commanded to do so are facts that a reasonable
26 consumer would consider important in selecting a vehicle to purchase or lease.
27 When Plaintiffs bought a Toyota Vehicle for personal, family, or household
28

1 purposes, they reasonably expected the vehicle would (a) not accelerate unless
2 commanded to do so by application of the accelerator pedal or other driver-
3 controlled means; (b) decelerate to a stop when the brake pedal was applied, and was
4 equipped with any necessary fail-safe mechanisms including a brake-override.
5

6 683. Defendants' deceptive practices were likely to and did in fact deceive
7 reasonable consumers, including Plaintiffs, about the true safety and reliability of the
8 Defective Vehicles.

9 684. Plaintiffs suffered injury-in-fact to their legally protected property
10 interests as a result of Defendants' violations of the Colorado CPA detailed above.
11 Plaintiffs currently own or lease, or within the class period have owned or leased, the
12 Defective Vehicles that are defective and inherently unsafe. ETCS defects and the
13 resulting unintended acceleration incidents have caused the value of the Defective
14 Vehicles to plummet.
15

16 685. Pursuant to § 6-1-113(2) of the Colorado CPA, Plaintiffs seek monetary
17 relief against TMS and TMC measured as the greater of (a) the amount of actual
18 damages sustained, (b) statutory damages in the amount of \$500 for each Plaintiff, or
19 (c) three times the amount of actual damages if Plaintiffs establish that TMS and
20 TMC engaged in bad faith conduct.
21

22 **COUNT II**

23 **BREACH OF EXPRESS WARRANTY**

24 **(Col. Rev. Stat. § 4-2-313)**

25 686. Plaintiffs reallege and incorporate by reference all paragraphs as though
26 fully set forth herein.
27
28

1 687. Toyota is and was at all relevant times a merchant with respect to motor
2 vehicles under COL. REV. STAT. § 4-2-104.

3 688. In the course of selling its vehicles, Toyota expressly warranted in
4 writing that the vehicles were covered by a Basic Warranty.

5 689. Toyota breached the express warranty to repair and adjust to correct
6 defects in materials and workmanship of any part supplied by Toyota. Toyota has
7 not repaired or adjusted, and has been unable to repair or adjust, the Defective
8 Vehicles' materials and workmanship defects.

9 690. In addition to this Basic Warranty, Toyota expressly warranted several
10 attributes, characteristics and qualities, as set forth above.

11 691. These warranties are only a sampling of the numerous warranties that
12 Toyota made relating to safety, reliability and operation, which are more fully
13 outlined in Section IV.A., *supra*. Generally these express warranties promise
14 heightened, superior, and state-of-the-art safety, reliability, performance standards,
15 and promote the benefits of ETCS. These warranties were made, *inter alia*, in
16 advertisements, in Toyota's "e-brochures," and in uniform statements provided by
17 Toyota to be made by salespeople. These affirmations and promises were part of the
18 basis of the bargain between the parties.

19 692. These additional warranties were also breached because the Defective
20 Vehicles were not fully operational, safe, or reliable (and remained so even after the
21 problems were acknowledged and a recall "fix" was announced), nor did they
22 comply with the warranties expressly made to purchasers or lessees. Toyota did not
23 provide at the time of sale, and has not provided since then, vehicles conforming to
24 these express warranties.

1 693. Furthermore, the limited warranty of repair and/or adjustments to
2 defective parts, fails in its essential purpose because the contractual remedy is
3 insufficient to make the Plaintiffs and the Class whole and because the Defendants
4 have failed and/or have refused to adequately provide the promised remedies within
5 a reasonable time.
6

7 694. Accordingly, recovery by the Plaintiffs is not limited to the limited
8 warranty of repair or adjustments to parts defective in materials or workmanship, and
9 Plaintiffs seek all remedies as allowed by law.

10 695. Also, as alleged in more detail herein, at the time that Defendants
11 warranted and sold the vehicles they knew that the vehicles did not conform to the
12 warranties and were inherently defective, and Defendants wrongfully and
13 fraudulently misrepresented and/or concealed material facts regarding their vehicles.
14 Plaintiffs and the Class were therefore induced to purchase the vehicles under false
15 and/or fraudulent pretenses. The enforcement under these circumstances of any
16 limitations whatsoever precluding the recovery of incidental and/or consequential
17 damages is unenforceable.
18

19 696. Moreover, many of the damages flowing from the Defective Vehicles
20 cannot be resolved through the limited remedy of “replacement or adjustments,” as
21 those incidental and consequential damages have already been suffered due to
22 Defendants’ fraudulent conduct as alleged herein, and due to their failure and/or
23 continued failure to provide such limited remedy within a reasonable time, and any
24 limitation on Plaintiffs’ and the Class’ remedies would be insufficient to make them
25 whole.
26
27
28

697. Finally, due to the Defendants' breach of warranties as set forth herein, Plaintiffs and the Class assert as an additional and/or alternative remedy, as set forth in COL. REV. STAT. § 4-2-711, for a revocation of acceptance of the goods, and for a return to Plaintiffs and to the Class of the purchase price of all vehicles currently owned and for such other incidental and consequential damages as allowed under COL. REV. STAT. §§ 4-2-711 and 4-2-608.

698. Toyota was provided notice of these issues by numerous complaints filed against it, including the instant complaint, and by numerous individual letters and communications sent by Plaintiffs and the Class before or within a reasonable amount of time after Toyota issued the recall and the allegations of vehicle defects became public.

699. As a direct and proximate result of Toyota's breach of express warranties, Plaintiffs and the Class have been damaged in an amount to be determined at trial.

COUNT III

BREACH OF THE IMPLIED WARRANTY OF MERCHANTABILITY
(Col. Rev. Stat. § 4-2-314)

700. Plaintiffs incorporate by reference and reallege all paragraphs alleged herein.

701. Toyota is and was at all relevant times a merchant with respect to motor vehicles under COL. REV. STAT. § 4-2-104.

702. A warranty that the Defective Vehicles were in merchantable condition was implied by law in the instant transaction, pursuant to COL. REV. STAT. § 4-2-314.

704. Toyota was provided notice of these issues by numerous complaints filed against it, including the instant complaint, and by numerous individual letters and communications sent by Plaintiffs and the Class before or within a reasonable amount of time after Toyota issued the recall and the allegations of vehicle defects became public.

COUNT IV
REVOCATION OF ACCEPTANCE
(Col. Rev. Stat. § 4-2-608)

707. Plaintiffs identified above demanded revocation and the demands were refused.

1 discovered them when they purchased or leased their automobiles from Toyota. On
2 the other hand, Toyota was aware of the defects and nonconformities at the time of
3 sale and thereafter.

4 709. Acceptance was reasonably induced by the difficulty of discovery of the
5 defects and nonconformities before acceptance.
6

7 710. There has been no change in the condition of Plaintiffs' vehicles not
8 caused by the defects and nonconformities.

9 711. When Plaintiffs sought to revoke acceptance, Toyota refused to accept
10 return of the Defective Vehicles and to refund Plaintiffs' purchase price and monies
11 paid.
12

13 712. Plaintiffs and the Class would suffer economic hardship if they returned
14 their vehicles but did not receive the return of all payments made by them. Because
15 Toyota is refusing to acknowledge any revocation of acceptance and return
16 immediately any payments made, Plaintiffs and the Class have not re-accepted their
17 Defective Vehicles by retaining them.

18 713. These defects and nonconformities substantially impaired the value of
19 the Defective Vehicles to Plaintiffs and the Class. This impairment stems from two
20 basic sources. First, the Defective Vehicles fail in their essential purpose because
21 they present an unreasonably high risk of sudden unintended acceleration (a risk
22 acknowledged by Toyota's recall), rendering them unsafe in a very material way.
23 Second, the repair and adjust warranty has failed of its essential purpose because
24 Toyota cannot repair or adjust the Defective Vehicles.
25
26

27 714. Plaintiffs and the Class provided notice of their intent to seek revocation
28 of acceptance by a class-action lawsuit seeking such relief. In addition, Plaintiffs

1 (and many Class members) have requested that Toyota accept return of their vehicles
2 and return all payments made. Plaintiffs on behalf of themselves and the Class
3 hereby demand revocation and tender their Defective Vehicles.

4 715. Plaintiffs and the Class would suffer economic hardship if they returned
5 their vehicles but did not receive the return of all payments made by them. Because
6 Toyota is refusing to acknowledge any revocation of acceptance and return
7 immediately any payments made, Plaintiffs and the Class have not re-accepted their
8 Defective Vehicles by retaining them, as they must continue using them due to the
9 financial burden of securing alternative means of transport for an uncertain and
10 substantial period of time.
11

12 716. Finally, due to the Defendants' breach of warranties as set forth herein,
13 Plaintiffs and the Class assert as an additional and/or alternative remedy, as set forth
14 in COL. REV. STAT. § 4-2-711, for a revocation of acceptance of the goods, and for a
15 return to Plaintiffs and to the Class of the purchase price of all vehicles currently
16 owned and for such other incidental and consequential damages as allowed under
17 COL. REV. STAT. § 4-2-711.
18

19 717. Consequently, Plaintiffs and the Class are entitled to revoke their
20 acceptances, receive all payments made to Toyota, and to all incidental and
21 consequential damages, including the costs associated with purchasing safer vehicles,
22 and all other damages allowable under law, all in amounts to be proven at trial.
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COUNT V

BREACH OF COMMON LAW WARRANTY

(Based On Colorado Law)

718. Plaintiffs incorporate by reference and reallege all paragraphs as though fully set forth herein.

719. To the extent Toyota's repair or adjust commitment is deemed not to be a warranty under the Uniform Commercial Code as adopted by Colorado, Plaintiffs plead in the alternative under common law warranty and contract law. Toyota limited the remedies available to Plaintiffs and the Class to just repairs and adjustments needed to correct defects in materials or workmanship of any part supplied by Toyota, and/or warranted the quality or nature of those services to Plaintiffs.

720. Toyota breached this warranty or contract obligation by failing to repair the Defective Vehicles evidencing a sudden unintended acceleration problem, including those that were recalled, or to replace them.

721. As a direct and proximate result of Defendants' breach of contract or common law warranty, Plaintiffs and the Class have been damaged in an amount to be proven at trial, which shall include, but is not limited to, all compensatory damages, incidental and consequential damages, and other damages allowed by law.

COUNT VI

FRAUD BY CONCEALMENT

(Based On Colorado Law)

722. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1 723. As set forth above, Defendants concealed and/or suppressed material
2 facts concerning the safety of their vehicles that in equity and good conscience
3 should be disclosed.

4 724. Defendants had a duty to disclose these safety issues because they
5 consistently marketed their vehicles as safe and proclaimed that safety is one of
6 Toyota's highest corporate priorities. Once Defendants made representations to the
7 public about safety, Defendants were under a duty to disclose these omitted facts,
8 because where one does speak one must speak the whole truth and not conceal any
9 facts which materially qualify those facts stated. One who volunteers information
10 must be truthful, and the telling of a half-truth calculated to deceive is fraud.
11

12 725. In addition, Defendants had a duty to disclose these omitted material
13 facts because they were known and/or accessible only to Defendants who have
14 superior knowledge and access to the facts, and Defendants knew they were not
15 known to or reasonably discoverable by Plaintiffs and the Class. These omitted facts
16 were material because they directly impact the safety of the Defective Vehicles.
17 Whether or not a vehicle accelerates only at the driver's command, and whether a
18 vehicle will stop or not upon application of the brake by the driver, are material
19 safety concerns. Defendants possessed exclusive knowledge of the defects rendering
20 Defective Vehicles inherently more dangerous and unreliable than similar vehicles.
21

22 726. Defendants actively and knowingly concealed and/or suppressed these
23 material facts, in whole or in part, with the intent to induce Plaintiffs and the Class to
24 purchase the Defective Vehicles at a higher price for the vehicles, which did not
25 match the vehicles' true value.
26
27
28

1 727. Defendants still have not made full and adequate disclosure and
2 continue to defraud Plaintiffs and the Class.

3 728. Plaintiffs and the Class were unaware of these omitted material facts
4 and would not have acted as they did if they had known of the concealed and/or
5 suppressed facts. Plaintiffs' and the Class' actions were justified. Defendants were
6 in exclusive control of the material facts and such facts were not known to the public
7 or the Class.
8

9 729. As a result of the concealment and/or suppression of the facts, Plaintiffs
10 and the Class sustained damage. Plaintiffs and the Class reserve their right to elect
11 either to (a) rescind their purchase or lease of the Defective Vehicles and obtain
12 restitution (b) affirm their purchase or lease of the Defective Vehicles and recover
13 damages.
14

15 730. Defendants acts were done fraudulently, maliciously, or willfully for
16 purposes of COL. REV. STAT. § 13-21-102. Defendants' conduct warrants an
17 assessment of exemplary damages in an amount which is equal to the amount of the
18 actual damages awarded to Plaintiffs and the Class.
19

20 **COUNT VII**

21 **UNJUST ENRICHMENT**

22 **(Based On Colorado Law)**

23 731. Plaintiffs reallege and incorporate by reference all paragraphs as though
24 fully set forth herein.

25 732. As a result of their wrongful and fraudulent acts and omissions, as set
26 forth above, pertaining to the design defect of their vehicles and the concealment of
27
28

1 the defect, Defendants charged a higher price for their vehicles than the vehicles'
2 true value and Defendants obtained monies which rightfully belong to Plaintiffs.

3 733. Defendants enjoyed the benefit of increased financial gains, to the
4 detriment of Plaintiffs and the Class, who paid a higher price for vehicles which
5 actually had lower values. It would be inequitable and unjust for Defendants to
6 retain these wrongfully obtained profits.
7

8 734. Plaintiffs, therefore, seek an order establishing Defendants as
9 constructive trustees of the profits unjustly obtained, plus interest.

10 **CONNECTICUT**

11 **COUNT I**

12 **VIOLATION OF CONNECTICUT UNLAWFUL TRADE PRACTICES ACT**

13 **(Conn. Gen. Stat. § 42-110A, *et seq.*)**

14 735. Plaintiffs reallege and incorporate by reference all paragraphs as though
15 fully set forth herein.
16

17 736. The Connecticut Unfair Trade Practices Act (“CUTPA”) provides: “No
18 person shall engage in unfair methods of competition and unfair or deceptive acts or
19 practices in the conduct of any trade or commerce.” CONN. GEN. STAT. § 42-
20 110b(a).
21

22 737. Toyota is a person within the meaning of CUTPA. CONN. GEN. STAT.
23 § 42-110a(3).
24

25 738. In the course of Toyota’s business, it willfully failed to disclose and
26 actively concealed the dangerous risk of throttle control failure and the lack of
27 adequate fail-safe mechanisms in Defective Vehicles equipped with ETCS as
28 described above. This was a deceptive act in that Toyota represented that Defective

1 Vehicles have characteristics, uses, benefits, and qualities which they do not have;
2 represented that Defective Vehicles are of a particular standard and quality when they
3 are not; and advertised Defective Vehicles with the intent not to sell them as
4 advertised. Toyota knew or should have known that its conduct violated the CUTPA.
5

6 739. Toyota engaged in a deceptive trade practice when it failed to disclose
7 material information concerning the Toyota vehicles which was known to Toyota at
8 the time of the sale. Toyota deliberately withheld the information about the vehicles'
9 propensity for rapid, uncontrolled acceleration in order to ensure that consumers
10 would purchase its vehicles and to induce the consumer to enter into a transaction.
11

12 740. Toyota's conduct was unfair because it causes substantial injury to
13 consumers.

14 741. The propensity of the Toyotas for rapid, uncontrolled acceleration and
15 their lack of a fail-safe mechanism were material to Plaintiffs and the Class. Had
16 Plaintiffs and the Class known that their Toyotas had these serious safety defects,
17 they would not have purchased their Toyotas.

18 742. Plaintiffs and the Class suffered ascertainable loss caused by Toyota's
19 deceptive and unfair practices. Plaintiffs and the Class overpaid for their vehicles
20 and did not receive the benefit of their bargain. The value of their Toyotas have
21 diminished now that the safety issues have come to light, and Plaintiffs and the Class
22 own vehicles that are not safe.
23

24 743. Toyota engaged in conduct amounting to a particularly aggravated,
25 deliberate disregard of the rights and safety of others.
26

27 744. Plaintiffs are entitled to recover their actual damages, punitive damages,
28 and attorneys' fees pursuant to CONN. GEN. STAT. § 42-110g.

745. Pursuant to CONN. GEN. STAT. § 42-110g(c), Plaintiffs will mail a copy of the complaint to Connecticut's Attorney General.

COUNT II

BREACH OF CONTRACT

(Based On Connecticut Law)

746. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

747. To the extent Toyota's repair or adjust commitment is deemed not to be a warranty under Connecticut's Commercial Code, Plaintiffs plead in the alternative under common law and contract law. Toyota limited the remedies available to Plaintiffs and the Class to just repairs and adjustments needed to correct defects in materials or workmanship of any part supplied by Toyota, and/or warranted the quality or nature of those services to Plaintiffs.

748. Toyota breached this contract obligation by failing to repair the Defective Vehicles evidencing a sudden unintended acceleration problem, including those that were recalled, or to replace them.

749. As a direct and proximate result of Defendants' breach of contract, Plaintiffs and the Class have been damaged in an amount to be proven at trial, which shall include, but is not limited to, all compensatory damages, incidental and consequential damages, and other damages allowed by law.

COUNT III

IN THE ALTERNATIVE, UNJUST ENRICHMENT

(Based On Connecticut Law)

750. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

751. Toyota had knowledge of the safety defects in its vehicles, which it failed to disclose to Plaintiffs and the Class.

752. As a result of its wrongful and fraudulent acts and omissions, as set forth above, pertaining to the design defect of their vehicles and the concealment of the defect, Toyota charged a higher price for its vehicles than the vehicles' true value. Toyota accordingly received a benefit from Plaintiffs to Plaintiffs' detriment.

753. Toyota appreciated, accepted and retained the benefits conferred by Plaintiffs and other Class members, who without knowledge of the safety defects paid a higher price for vehicles which actually had lower values. It would be inequitable and unjust for Toyota to retain these wrongfully obtained profits.

754. Plaintiffs, therefore, are entitled to restitution and seek an order establishing Toyota as constructive trustees of the profits unjustly obtained, plus interest.

DELAWARE

COUNT I

VIOLATION OF THE DELAWARE CONSUMER FRAUD ACT

(6 Del. Code § 2513, et seq.)

755. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1 756. The Delaware Consumer Fraud Act (“CFA”) prohibits the “act, use or
2 employment by any person of any deception, fraud, false pretense, false promise,
3 misrepresentation, or the concealment, suppression, or omission of any material fact
4 with intent that others rely upon such concealment, suppression or omission, in
5 connection with the sale, lease or advertisement of any merchandise, whether or not
6 any person has in fact been misled, deceived or damaged thereby.” 6 DEL. CODE
7 § 2513(a).
8

9 757. Toyota is a person with the meaning of 6 DEL. CODE § 2511(7).

10 758. As described herein Toyota made false representations regarding the
11 safety and reliability of its vehicles and concealed important facts regarding the
12 tendency of its vehicles to suddenly and uncontrollably accelerate and regarding the
13 lack of a fail-safe mechanism to override this unintended acceleration. Toyota
14 intended that others rely on these misrepresentations and omissions in connection
15 with the sale and lease of its vehicles.
16

17 759. Toyota’s actions as set forth above occurred in the conduct of trade or
18 commerce.
19

20 760. Toyota’s conduct proximately caused injuries to Plaintiffs and the Class.

21 761. Plaintiffs and the Class were injured as a result of Toyota’s conduct in
22 that Plaintiffs overpaid for their Defective Vehicles and did not receive the benefit of
23 their bargain, and their vehicles have suffered a diminution in value. These injuries
24 are the direct and natural consequence of Toyota’s misrepresentations and omissions.
25

26 762. Plaintiffs are entitled to recover damages, as well as punitive damages
27 for Toyota’s gross and aggravated misconduct.
28

COUNT II

VIOLATION OF THE DELAWARE DECEPTIVE TRADE PRACTICES ACT

(6 Del. Code § 2532, *et seq.*)

763. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

764. Delaware's Deceptive Trade Practices Act ("DTPA") prohibits a person from engaging in a "deceptive trade practice," which includes: "(5) Represent[ing] that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have, or that a person has a sponsorship, approval, status, affiliation, or connection that the person does not have"; "(7) Represent[ing] that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another"; "(9) Advertis[ing] goods or services with intent not to sell them as advertised"; or "(12) Engag[ing] in any other conduct which similarly creates a likelihood of confusion or of misunderstanding."

765. Toyota is a person with the meaning of 6 Del. Code § 2531(5).

766. In the course of Toyota's business, it willfully failed to disclose and actively concealed the dangerous risk of throttle control failure and the lack of adequate fail-safe mechanisms in Defective Vehicles equipped with ETCS as described above. Accordingly, Toyota engaged in unlawful trade practices, including representing that Defective Vehicles have characteristics, uses, benefits, and qualities which they do not have; representing that Defective Vehicles are of a particular standard and quality when they are not; advertising Defective Vehicles

1 with the intent not to sell them as advertised; and otherwise engaging in conduct
2 likely to deceive.

3 767. Toyota's actions as set forth above occurred in the conduct of trade or
4 commerce.

5 768. Toyota's conduct proximately caused injuries to Plaintiffs and the Class.

6 769. Plaintiffs and the Class were injured as a result of Toyota's conduct in
7 that Plaintiffs overpaid for their Defective Vehicles and did not receive the benefit of
8 their bargain, and their vehicles have suffered a diminution in value. These injuries
9 are the direct and natural consequence of Toyota's misrepresentations and omissions.
10

11 770. Plaintiffs seek injunctive relief and, if awarded damages under
12 Delaware common law or Delaware Consumer Fraud Act, treble damages pursuant
13 to 6 DEL. CODE § 2533(c).
14

15 771. Plaintiffs also seek punitive damages based on the outrageousness and
16 recklessness of Toyota's conduct and its high net worth.

17 **COUNT III**

18 **BREACH OF EXPRESS WARRANTY**

19 **(6 Del. Code § 2-313)**

20 772. Plaintiffs reallege and incorporate by reference all paragraphs as though
21 fully set forth herein.
22

23 773. Toyota is and was at all relevant times a merchant with respect to motor
24 vehicles.

25 774. . In the course of selling its vehicles, Toyota expressly warranted
26 in writing that the Vehicles were covered by a Basic Warranty.
27
28

1 775. 4. Toyota breached the express warranty to repair and adjust to
2 correct defects in materials and workmanship of any part supplied by Toyota.
3 Toyota has not repaired or adjusted, and has been unable to repair or adjust, the
4 Vehicles' materials and workmanship defects.

5 776. In addition to this Basic Warranty, Toyota expressly warranted several
6 attributes, characteristics and qualities.

7 777. These warranties are only a sampling of the numerous warranties that
8 Toyota made relating to safety, reliability and operation, which are more fully
9 outlined in Section IV.A., *supra*. Generally these express warranties promise
10 heightened, superior, and state-of-the-art safety, reliability, performance standards,
11 and promote the benefits of ETCS. These warranties were made, *inter alia*, in
12 advertisements, in Toyota's "e brochures," and in uniform statements provided by
13 Toyota to be made by salespeople. These affirmations and promises were part of the
14 basis of the bargain between the parties.

15 778. These additional warranties were also breached because the Defective
16 Vehicles were not fully operational, safe, or reliable (and remained so even after the
17 problems were acknowledged and a recall "fix" was announced), nor did they
18 comply with the warranties expressly made to purchasers or lessees. Toyota did not
19 provide at the time of sale, and has not provided since then, vehicles conforming to
20 these express warranties.

21 779. Furthermore, the limited warranty of repair and/or adjustments to
22 defective parts, fails in its essential purpose because the contractual remedy is
23 insufficient to make the Plaintiffs and the Class whole and because the Defendants
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1 have failed and/or have refused to adequately provide the promised remedies within
2 a reasonable time.

3 780. Accordingly, recovery by the Plaintiffs is not limited to the limited
4 warranty of repair or adjustments to parts defective in materials or workmanship, and
5 Plaintiffs seek all remedies as allowed by law.
6

7 781. Also, as alleged in more detail herein, at the time that Defendants
8 warranted and sold the vehicles they knew that the vehicles did not conform to the
9 warranties and were inherently defective, and Defendants wrongfully and
10 fraudulently misrepresented and/or concealed material facts regarding their vehicles.
11 Plaintiffs and the Class were therefore induced to purchase the vehicles under false
12 and/or fraudulent pretenses.
13

14 782. Moreover, many of the damages flowing from the Defective Vehicles
15 cannot be resolved through the limited remedy of “replacement or adjustments,” as
16 those incidental and consequential damages have already been suffered due to
17 Defendants’ fraudulent conduct as alleged herein, and due to their failure and/or
18 continued failure to provide such limited remedy within a reasonable time, and any
19 limitation on Plaintiffs’ and the Class’ remedies would be insufficient to make
20 Plaintiffs and the Class whole.
21

22 783. Finally, due to the Defendants’ breach of warranties as set forth herein,
23 Plaintiffs and the Class assert as an additional and/or alternative remedy, as set forth
24 in 6 DEL. CODE. § 2-608, for a revocation of acceptance of the goods, and for a
25 return to Plaintiffs and to the Class of the purchase price of all vehicles currently
26 owned.
27
28

785. As a direct and proximate result of Toyota's breach of express warranties, Plaintiffs and the Class have been damaged in an amount to be determined at trial.

786. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

788. A warranty that the Defective Vehicles were in merchantable condition is implied by law in the instant transactions.

791. As a direct and proximate result of Toyota's breach of the warranties of merchantability, Plaintiffs and the Class have been damaged in an amount to be proven at trial.

792. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

794. Plaintiffs and the Class had no knowledge of such defects and nonconformities, were unaware of these defects, and reasonably could not have discovered them when they purchased or leased their automobiles from Toyota. On the other hand, Toyota was aware of the defects and nonconformities at the time of sale and thereafter.

796. There has been no change in the condition of Plaintiffs' vehicles not caused by the defects and nonconformities.

1 797. When Plaintiffs sought to revoke acceptance, Toyota refused to accept
2 return of the Defective Vehicles and to refund Plaintiffs' purchase price and monies
3 paid.

4 798. Plaintiffs and the Class would suffer economic hardship if they returned
5 their vehicles but did not receive the return of all payments made by them. Because
6 Toyota is refusing to acknowledge any revocation of acceptance and return
7 immediately any payments made, Plaintiffs and the Class have not re-accepted their
8 Defective Vehicles by retaining them.

9 799. These defects and nonconformities substantially impaired the value of
10 the Defective Vehicles to Plaintiffs and the Class. This impairment stems from two
11 basic sources. First, the Defective Vehicles fail in their essential purpose because
12 they present an unreasonably high risk of sudden unintended acceleration (a risk
13 acknowledged by Toyota's recall), rendering them unsafe in a very material way.
14 Second, the repair and adjust warranty has failed of its essential purpose because
15 Toyota cannot repair or adjust the Defective Vehicles.

16 800. Plaintiffs and the Class provided notice of their intent to seek revocation
17 of acceptance by a class-action lawsuit seeking such relief. In addition, Plaintiffs
18 (and many Class members) have requested that Toyota accept return of their vehicles
19 and return all payments made. Plaintiffs on behalf of themselves and the Class
20 hereby demand revocation and tender their Defective Vehicles.

21 801. Plaintiffs and the Class would suffer economic hardship if they returned
22 their vehicles but did not receive the return of all payments made by them. Because
23 Toyota is refusing to acknowledge any revocation of acceptance and return
24 immediately any payments made, Plaintiffs and the Class have not re-accepted their
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1 Defective Vehicles by retaining them, as they must continue using them due to the
2 financial burden of securing alternative means of transport for an uncertain and
3 substantial period of time.

4 802. Finally, due to the Defendants' breach of warranties as set forth herein,
5 Plaintiffs and the Class assert as an additional and/or alternative remedy, as set forth
6 in 6 DEL. CODE § 2-608, for a revocation of acceptance of the goods, and for a return
7 to Plaintiffs and to the Class of the purchase price of all vehicles currently owned.
8

9 803. Consequently, Plaintiffs and the Class are entitled to revoke their
10 acceptances, receive all payments made to Toyota, and to all incidental and
11 consequential damages, including the costs associated with purchasing safer vehicles,
12 and all other damages allowable under law, all in amounts to be proven at trial.
13

14 **COUNT VI**

15 **BREACH OF CONTRACT/COMMON LAW WARRANTY**

16 **(Based On Delaware Law)**

17 804. Plaintiffs reallege and incorporate by reference all paragraphs as though
18 fully set forth herein.
19

20 805. To the extent Toyota's repair or adjust commitment is deemed not to be
21 a warranty under Delaware's Commercial Code, Plaintiffs plead in the alternative
22 under common law warranty and contract law. Toyota limited the remedies
23 available to Plaintiffs and the Class to just repairs and adjustments needed to correct
24 defects in materials or workmanship of any part supplied by Toyota, and/or
25 warranted the quality or nature of those services to Plaintiffs.
26
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28

807. As a direct and proximate result of Defendants' breach of contract or common law warranty, Plaintiffs and the Class have been damaged in an amount to be proven at trial, which shall include, but is not limited to, all compensatory damages, incidental and consequential damages, and other damages allowed by law.

808. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

810. As a result of their wrongful and fraudulent acts and omissions, as set forth above, pertaining to the design defect of their vehicles and the concealment of the defect, Toyota charged a higher price for their vehicles than the vehicles' true value and Toyota obtained monies which rightfully belong to Plaintiffs.

DISTRICT OF COLUMBIA

COUNT I

VIOLATION OF THE CONSUMER PROTECTION PROCEDURES ACT

(D.C. Code § 28-3901 *et seq.*)

814. Defendants are “persons” under D.C. CODE § 28-3901(a)(1).

who purchased or leased one or more Defective Vehicles.

817. By failing to disclose and actively concealing the dangerous risk of throttle control failure and the lack of adequate fail-safe mechanisms in Defective Vehicles equipped with ETCS, Defendants engaged in unfair or deceptive practices prohibited by the CPPA, D.C. CODE § 28-3901, *et seq.*, including (1) representing that Defective Vehicles have characteristics, uses, benefits, and qualities which they do not have, (2) representing that Defective Vehicles are of a particular standard,

1 quality, and grade when they are not, (3) advertising Defective Vehicles with the
2 intent not to sell them as advertised, (4) representing that a transaction involving
3 Defective Vehicles confers or involves rights, remedies, and obligations which it
4 does not, and (5) representing that the subject of a transaction involving Defective
5 Vehicles has been supplied in accordance with a previous representation when it has
6 not.
7

8 818. Toyota's actions as set forth above occurred in the conduct of trade or
9 commerce.

10 819. Toyota's actions affect the public interest because Plaintiffs were
11 injured in exactly the same way as millions of others purchasing and/or leasing
12 Toyota vehicles as a result of Toyota's generalized course of deception. All of the
13 wrongful conduct alleged herein occurred, and continues to occur, in the conduct of
14 Toyota's business.
15

16 820. Plaintiffs and the Class suffered ascertainable loss as a result of
17 Defendant's conduct. Plaintiffs overpaid for their Defective Vehicles and did not
18 receive the benefit of their bargain, and their vehicles have suffered a diminution in
19 value.
20

21 821. Toyota's conduct proximately caused the injuries to Plaintiffs and the
22 Class.

23 822. . Toyota is liable to Plaintiffs and the Class for damages in
24 amounts to be proven at trial, including attorneys' fees, costs, and treble damages.
25 Plaintiffs further allege that Defendants are liable for punitive damages under the
26 CPPA as Defendants acted with a state of mind evincing malice or its equivalent.
27
28

COUNT II

BREACH OF EXPRESS WARRANTY

(D.C. Code § 28:2-313)

823. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

824. Toyota is and was at all relevant times a seller with respect to motor vehicles.

825. In the course of selling its vehicles, Toyota expressly warranted in writing that the Vehicles were covered by a Basic Warranty.

826. Toyota breached the express warranty to repair and adjust to correct defects in materials and workmanship of any part supplied by Toyota. Toyota has not repaired or adjusted, and has been unable to repair or adjust, the Vehicles' materials and workmanship defects.

827. In addition to this Basic Warranty, Toyota expressly warranted several attributes, characteristics and qualities, as set forth above.

828. These warranties are only a sampling of the numerous warranties that Toyota made relating to safety, reliability and operation, which are more fully outlined in Section IV.A. of the MCC. Generally these express warranties promise heightened, superior, and state-of-the-art safety, reliability, performance standards, and promote the benefits of ETCS. These warranties were made, *inter alia*, in advertisements, in Toyota's "e brochures," and in uniform statements provided by Toyota to be made by salespeople. These affirmations and promises were part of the basis of the bargain between the parties.

1 829. These additional warranties were also breached because the Defective
2 Vehicles were not fully operational, safe, or reliable (and remained so even after the
3 problems were acknowledged and a recall “fix” was announced), nor did they
4 comply with the warranties expressly made to purchasers or lessees. Toyota did not
5 provide at the time of sale, and has not provided since then, vehicles conforming to
6 these express warranties.
7

8 830. Furthermore, the limited warranty of repair and/or adjustments to
9 defective parts, fails in its essential purpose because the contractual remedy is
10 insufficient to make the Plaintiffs and the Class whole and because the Defendants
11 have failed and/or have refused to adequately provide the promised remedies within
12 a reasonable time.
13

14 831. Accordingly, recovery by the Plaintiffs is not limited to the limited
15 warranty of repair or adjustments to parts defective in materials or workmanship, and
16 Plaintiffs seek all remedies as allowed by law.
17

18 832. Also, as alleged in more detail herein, at the time that Defendants
19 warranted and sold the vehicles they knew that the vehicles did not conform to the
20 warranties and were inherently defective, and Defendants wrongfully and
21 fraudulently misrepresented and/or concealed material facts regarding their vehicles.
22 Plaintiffs and the Class were therefore induced to purchase the vehicles under false
23 and/or fraudulent pretenses.
24

25 833. Moreover, many of the damages flowing from the Defective Vehicles
26 cannot be resolved through the limited remedy of “replacement or adjustments,” as
27 those incidental and consequential damages have already been suffered due to
28 Defendants’ fraudulent conduct as alleged herein, and due to their failure and/or

1 continued failure to provide such limited remedy within a reasonable time, and any
2 limitation on Plaintiffs' and the Class' remedies would be insufficient to make
3 Plaintiffs and the Class whole.

4 834. Finally, due to the Defendants' breach of warranties as set forth herein,
5 Plaintiffs and the Class assert as an additional and/or alternative remedy, as set forth
6 in D.C. CODE § 28:2-608, for a revocation of acceptance of the goods, and for a return
7 to Plaintiffs and to the Class of the purchase price of all vehicles currently owned.
8

9 835. Toyota was provided notice of these issues by numerous complaints
10 filed against it, including the instant complaint, and by numerous individual letters
11 and communications sent by Plaintiffs and the Class before or within a reasonable
12 amount of time after Toyota issued the recall and the allegations of vehicle defects
13 became public.
14

15 836. As a direct and proximate result of Toyota's breach of express
16 warranties, Plaintiffs and the Class have been damaged in an amount to be
17 determined at trial.
18

19 **COUNT III**

20 **BREACH OF THE IMPLIED WARRANTY OF MERCHANTABILITY**

21 **(D.C. Code § 28:2-314)**

22 837. Plaintiffs reallege and incorporate by reference all paragraphs as though
23 fully set forth herein.

24 838. Toyota is and was at all relevant times a merchant with respect to motor
25 vehicles.
26

27 839. A warranty that the Defective Vehicles were in merchantable condition
28 is implied by law in the instant transactions.

1 840. These vehicles, when sold and at all times thereafter, were not in
2 merchantable condition and are not fit for the ordinary purpose for which cars are
3 used. Specifically, the Defective Vehicles are inherently defective in that there are
4 defects in the vehicle control systems that permit sudden unintended acceleration to
5 occur; the Defective Vehicles do not have an adequate fail-safe to protect against
6 such SUA events, nor do they have a brake-override; and the ETCS system was not
7 adequately tested.
8

9 841. Toyota was provided notice of these issues by numerous complaints
10 filed against it, including the instant complaint, and by numerous individual letters
11 and communications sent by Plaintiffs and the Class before or within a reasonable
12 amount of time after Toyota issued the recall and the allegations of vehicle defects
13 became public.
14

15 842. As a direct and proximate result of Toyota's breach of the warranties of
16 merchantability, Plaintiffs and the Class have been damaged in an amount to be
17 proven at trial.
18

19 **COUNT IV**

20 **UNJUST ENRICHMENT**

21 **(Based On District Of Columbia Law)**

22 843. Plaintiffs reallege and incorporate by reference all paragraphs as though
23 fully set forth herein.

24 844. Toyota had knowledge of the safety defects in its vehicles, which it
25 failed to disclose to Plaintiffs and the Class.
26

27 845. As a result of their wrongful and fraudulent acts and omissions, as set
28 forth above, pertaining to the design defect of their vehicles and the concealment of

1 the defect, Toyota charged a higher price for their vehicles than the vehicles' true
2 value and Toyota obtained monies which rightfully belong to Plaintiffs.

3 846. Toyota appreciated, accepted and retained the non-gratuitous benefits
4 conferred by Plaintiffs and other Class members, who without knowledge of the safety
5 defects paid a higher price for vehicles which actually had lower values. It would be
6 inequitable and unjust for Toyota to retain these wrongfully obtained profits.
7

8 847. Plaintiffs, therefore, are entitled to restitution and seek an order
9 establishing Toyota as constructive trustees of the profits unjustly obtained, plus
10 interest.
11

12 **COUNT V**

13 **BREACH OF CONTRACT/COMMON LAW WARRANTY**

14 **(Based On D.C. Law)**

15 848. Plaintiffs reallege and incorporate by reference all paragraphs as though
16 fully set forth herein.

17 849. To the extent Toyota's repair or adjust commitment is deemed not to be
18 a warranty under the District of Columbia's Commercial Code, Plaintiffs plead in the
19 alternative under common law warranty and contract law. Toyota limited the
20 remedies available to Plaintiffs and the Class to just repairs and adjustments needed
21 to correct defects in materials or workmanship of any part supplied by Toyota,
22 and/or warranted the quality or nature of those services to Plaintiffs.
23

24 850. Toyota breached this warranty or contract obligation by failing to repair
25 the Defective Vehicles evidencing a sudden unintended acceleration problem,
26 including those that were recalled, or to replace them.
27
28

FLORIDA

VIOLATION OF FLORIDA'S UNFAIR & DECEPTIVE TRADE PRACTICES ACT

852. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

854. Toyota's actions as set forth above occurred in the conduct of trade or commerce.

1 856. Plaintiffs and the Class were injured as a result of Defendants' conduct.
2 Plaintiffs overpaid for their Defective Vehicles and did not receive the benefit of
3 their bargain, and their vehicles have suffered a diminution in value.

4 857. Toyota's conduct proximately caused the injuries to Plaintiffs and the
5 Class.
6

7 858. Toyota is liable to Plaintiffs and the Class for damages in amounts to be
8 proven at trial, including attorneys' fees, costs, and treble damages.

9 859. Pursuant to FLA. STAT. § 501.201, Plaintiffs will serve the Florida
10 Attorney General with a copy of this complaint as Plaintiffs seek injunctive relief.
11

12 **COUNT II**

13 **BREACH OF EXPRESS WARRANTY**

14 **(Fla. Stat. § 672.313)**

15 860. Plaintiffs reallege and incorporate by reference all paragraphs as though
16 fully set forth herein.

17 861. Toyota is and was at all relevant times a merchant with respect to motor
18 vehicles.
19

20 862. In the course of selling its vehicles, Toyota expressly warranted in
21 writing that the Vehicles were covered by a Basic Warranty.

22 863. Toyota breached the express warranty to repair and adjust to correct
23 defects in materials and workmanship of any part supplied by Toyota. Toyota has
24 not repaired or adjusted, and has been unable to repair or adjust, the Vehicles'
25 materials and workmanship defects.
26

27 864. In addition to this Basic Warranty, Toyota expressly warranted several
28 attributes, characteristics and qualities, as set forth above.

1 865. These warranties are only a sampling of the numerous warranties that
2 Toyota made relating to safety, reliability and operation, which are more fully
3 outlined in Section IV.A., *supra*. Generally these express warranties promise
4 heightened, superior, and state-of-the-art safety, reliability, performance standards,
5 and promote the benefits of ETCS. These warranties were made, *inter alia*, in
6 advertisements, in Toyota's "e brochures," and in uniform statements provided by
7 Toyota to be made by salespeople. These affirmations and promises were part of the
8 basis of the bargain between the parties.
9

10 866. These additional warranties were also breached because the Defective
11 Vehicles were not fully operational, safe, or reliable (and remained so even after the
12 problems were acknowledged and a recall "fix" was announced), nor did they
13 comply with the warranties expressly made to purchasers or lessees. Toyota did not
14 provide at the time of sale, and has not provided since then, vehicles conforming to
15 these express warranties.
16

17 867. Furthermore, the limited warranty of repair and/or adjustments to
18 defective parts, fails in its essential purpose because the contractual remedy is
19 insufficient to make the Plaintiffs and the Class whole and because the Defendants
20 have failed and/or have refused to adequately provide the promised remedies within
21 a reasonable time.
22

23 868. Accordingly, recovery by the Plaintiffs is not limited to the limited
24 warranty of repair or adjustments to parts defective in materials or workmanship, and
25 Plaintiffs seek all remedies as allowed by law.
26

27 869. Also, as alleged in more detail herein, at the time that Defendants
28 warranted and sold the vehicles they knew that the vehicles did not conform to the

1 warranties and were inherently defective, and Defendants wrongfully and
2 fraudulently misrepresented and/or concealed material facts regarding their vehicles.
3 Plaintiffs and the Class were therefore induced to purchase the vehicles under false
4 and/or fraudulent pretenses.

5
6 870. Moreover, many of the damages flowing from the Defective Vehicles
7 cannot be resolved through the limited remedy of “replacement or adjustments,” as
8 those incidental and consequential damages have already been suffered due to
9 Defendants’ fraudulent conduct as alleged herein, and due to their failure and/or
10 continued failure to provide such limited remedy within a reasonable time, and any
11 limitation on Plaintiffs’ and the Class’ remedies would be insufficient to make
12 Plaintiffs and the Class whole.

13
14 871. Finally, due to the Defendants’ breach of warranties as set forth herein,
15 Plaintiffs and the Class assert as an additional and/or alternative remedy, as set forth
16 in FLA. STAT. § 672-608, for a revocation of acceptance of the goods, and for a return
17 to Plaintiffs and to the Class of the purchase price of all vehicles currently owned.

18
19 872. Toyota was provided notice of these issues by numerous complaints
20 filed against it, including the instant complaint, and by numerous individual letters
21 and communications sent by Plaintiffs and the Class before or within a reasonable
22 amount of time after Toyota issued the recall and the allegations of vehicle defects
23 became public.

24
25 873. As a direct and proximate result of Toyota’s breach of express
26 warranties, Plaintiffs and the Class have been damaged in an amount to be
27 determined at trial.
28

COUNT III

BREACH OF THE IMPLIED WARRANTY OF MERCHANTABILITY

(Fla. Stat. § 672.314)

874. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

875. Toyota is and was at all relevant times a merchant with respect to motor vehicles.

876. A warranty that the Defective Vehicles were in merchantable condition is implied by law in the instant transactions, pursuant to FLA. STAT. § 672.316.

877. These vehicles, when sold and at all times thereafter, were not in merchantable condition and are not fit for the ordinary purpose for which cars are used. Specifically, the Defective Vehicles are inherently defective in that there are defects in the vehicle control systems that permit sudden unintended acceleration to occur; the Defective Vehicles do not have an adequate fail-safe to protect against such SUA events, nor do they have a brake-override; and the ETCS system was not adequately tested.

878. 5. Toyota was provided notice of these issues by numerous complaints filed against it, including the instant complaint, and by numerous individual letters and communications sent by Plaintiffs and the Class before or within a reasonable amount of time after Toyota issued the recall and the allegations of vehicle defects became public.

879. Plaintiffs and the Class have had sufficient dealings with either the Defendants or their agents (dealerships) to establish privity of contract between Plaintiffs and the Class. Notwithstanding this, privity is not required in this case

1 because Plaintiffs and the Class are intended third-party beneficiaries of contracts
2 between Toyota and its dealers; specifically, they are the intended beneficiaries of
3 Toyota's implied warranties. The dealers were not intended to be the ultimate
4 consumers of the Defective Vehicles and have no rights under the warranty
5 agreements provided with the Defective Vehicles; the warranty agreements were
6 designed for and intended to benefit the ultimate consumers only. Finally, privity is
7 also not required because Plaintiffs' and Class' Toyotas are dangerous
8 instrumentalities due to the aforementioned defects and nonconformities.
9

10 880. As a direct and proximate result of Toyota's breach of the warranties of
11 merchantability, Plaintiffs and the Class have been damaged in an amount to be
12 proven at trial.
13

14 **COUNT IV**
15 **REVOCATION OF ACCEPTANCE**
16 **(Fla. Stat. § 672.608)**

17 881. Plaintiffs reallege and incorporate by reference all paragraphs as though
18 fully set forth herein.
19

20 882. Plaintiffs identified above demanded revocation and the demands were
21 refused.

22 883. Plaintiffs and the Class had no knowledge of such defects and
23 nonconformities, were unaware of these defects, and reasonably could not have
24 discovered them when they purchased or leased their automobiles from Toyota. On
25 the other hand, Toyota was aware of the defects and nonconformities at the time of
26 sale and thereafter.
27
28

1 884. Acceptance was reasonably induced by the difficulty of discovery of the
2 defects and nonconformities before acceptance.

3 885. There has been no change in the condition of Plaintiffs' vehicles not
4 caused by the defects and nonconformities.

5 886. When Plaintiffs sought to revoke acceptance, Toyota refused to accept
6 return of the Defective Vehicles and to refund Plaintiffs' purchase price and monies
7 paid.

8 887. Plaintiffs and the Class would suffer economic hardship if they returned
9 their vehicles but did not receive the return of all payments made by them. Because
10 Toyota is refusing to acknowledge any revocation of acceptance and return
11 immediately any payments made, Plaintiffs and the Class have not re-accepted their
12 Defective Vehicles by retaining them.

13 888. These defects and nonconformities substantially impaired the value of
14 the Defective Vehicles to Plaintiffs and the Class. This impairment stems from two
15 basic sources. First, the Defective Vehicles fail in their essential purpose because
16 they present an unreasonably high risk of sudden unintended acceleration (a risk
17 acknowledged by Toyota's recall), rendering them unsafe in a very material way.
18 Second, the repair and adjust warranty has failed of its essential purpose because
19 Toyota cannot repair or adjust the Defective Vehicles.

20 889. Plaintiffs and the Class provided notice of their intent to seek revocation
21 of acceptance by a class-action lawsuit seeking such relief. In addition, Plaintiffs
22 (and many Class members) have requested that Toyota accept return of their vehicles
23 and return all payments made. Plaintiffs on behalf of themselves and the Class
24 hereby demand revocation and tender their Defective Vehicles.

1 890. Plaintiffs and the Class would suffer economic hardship if they returned
2 their vehicles but did not receive the return of all payments made by them. Because
3 Toyota is refusing to acknowledge any revocation of acceptance and return
4 immediately any payments made, Plaintiffs and the Class have not re-accepted their
5 Defective Vehicles by retaining them, as they must continue using them due to the
6 financial burden of securing alternative means of transport for an uncertain and
7 substantial period of time.

8
9 891. Finally, due to the Defendants' breach of warranties as set forth herein,
10 Plaintiffs and the Class assert as an additional and/or alternative remedy, as set forth
11 in FLA. STAT. § 672.608, for a revocation of acceptance of the goods, and for a return
12 to Plaintiffs and to the Class of the purchase price of all vehicles currently owned.

13
14 892. Consequently, Plaintiffs and the Class are entitled to revoke their
15 acceptances, receive all payments made to Toyota, and to all incidental and
16 consequential damages, including the costs associated with purchasing safer vehicles,
17 and all other damages allowable under law, all in amounts to be proven at trial.

18
19 **COUNT V**

20 **BREACH OF CONTRACT/COMMON LAW WARRANTY**

21 **(Based On Florida Law)**

22 893. Plaintiffs reallege and incorporate by reference all paragraphs as though
23 fully set forth herein.

24 894. To the extent Toyota's repair or adjust commitment is deemed not to be
25 a warranty under Florida's Commercial Code, Plaintiffs plead in the alternative
26 under common law warranty and contract law. Toyota limited the remedies
27 available to Plaintiffs and the Class to just repairs and adjustments needed to correct
28

1 defects in materials or workmanship of any part supplied by Toyota, and/or
2 warranted the quality or nature of those services to Plaintiffs.

3 895. Toyota breached this warranty or contract obligation by failing to repair
4 the Defective Vehicles evidencing a sudden unintended acceleration problem,
5 including those that were recalled, or to replace them.
6

7 896. As a direct and proximate result of Defendants' breach of contract or
8 common law warranty, Plaintiffs and the Class have been damaged in an amount to
9 be proven at trial, which shall include, but is not limited to, all compensatory
10 damages, incidental and consequential damages, and other damages allowed by law.
11

12 **COUNT VI**

13 **FRAUD BY CONCEALMENT**

14 **(Based On Florida Law)**

15 897. Plaintiffs reallege and incorporate by reference all paragraphs as though
16 fully set forth herein.

17 898. Defendants had a duty to disclose these safety issues because they
18 consistently marketed their vehicles as safe and proclaimed that safety is one of
19 Toyota's highest corporate priorities. Once Defendants made representations to the
20 public about safety, Defendants were under a duty to disclose these omitted facts,
21 because where one does speak one must speak the whole truth and not conceal any
22 facts which materially qualify those facts stated. One who volunteers information
23 must be truthful, and the telling of a half-truth calculated to deceive is fraud.
24

25 899. In addition, Defendants had a duty to disclose these omitted material
26 facts because they were known and/or accessible only to Defendants who have
27 superior knowledge and access to the facts, and Defendants knew they were not
28

1 known to or reasonably discoverable by Plaintiffs and the Class. These omitted facts
2 were material because they directly impact the safety of the Defective Vehicles.
3 Whether or not a vehicle accelerates only at the driver's command, and whether a
4 vehicle will stop or not upon application of the brake by the driver, are material
5 safety concerns. Defendants possessed exclusive knowledge of the defects rendering
6 Defective Vehicles inherently more dangerous and unreliable than similar vehicles.
7

8 900. Defendants actively concealed and/or suppressed these material
9 facts, in whole or in part, with the intent to induce Plaintiffs and the Class to
10 purchase Defective Vehicles at a higher price for the vehicles, which did not match
11 the vehicles' true value.
12

13 901. Defendants still have not made full and adequate disclosure and
14 continue to defraud Plaintiffs and the Class.

15 902. Plaintiffs and the Class were unaware of these omitted material facts
16 and would not have acted as they did if they had known of the concealed and/or
17 suppressed facts. Plaintiffs' and the Class' actions were justified. Defendants were
18 in exclusive control of the material facts and such facts were not known to the public
19 or the Class.
20

21 903. As a result of the concealment and/or suppression of the facts, Plaintiffs
22 and the Class sustained damage. For those Plaintiffs and the Class who elect to
23 affirm the sale, these damages, include the difference between the actual value of
24 that which Plaintiffs and the Class paid and the actual value of that which they
25 received, together with additional damages arising from the sales transaction,
26 amounts expended in reliance upon the fraud, compensation for loss of use and
27 enjoyment of the property, and/or lost profits. For those Plaintiffs and the Class who
28

1 want to rescind the purchase, then those Plaintiffs and the Class are entitled to
2 restitution and consequential damages.

3 904. Defendants' acts were done maliciously, oppressively, deliberately, with
4 intent to defraud, and in reckless disregard of Plaintiffs' and the Class' rights and
5 well-being to enrich Defendants. Defendants' conduct warrants an assessment of
6 punitive damages in an amount sufficient to deter such conduct in the future, which
7 amount is to be determined according to proof.

8
9 **COUNT VII**
10 **UNJUST ENRICHMENT**
11 **(Based On Florida Law)**
12

13 905. Plaintiffs reallege and incorporate by reference all paragraphs as though
14 fully set forth herein.

15 906. Toyota had knowledge of the safety defects in its vehicles, which it
16 failed to disclose to Plaintiffs and the Class.

17 907. . As a result of their wrongful and fraudulent acts and omissions,
18 as set forth above, pertaining to the design defect of their vehicles and the
19 concealment of the defect, Toyota charged a higher price for their vehicles than the
20 vehicles' true value and Toyota obtained monies which rightfully belong to
21 Plaintiffs.

22
23 908. . Toyota appreciated, accepted and retained the non-gratuitous
24 benefits conferred by Plaintiffs and the Class, who without knowledge of the safety
25 defects paid a higher price for vehicles which actually had lower values. It would be
26 inequitable and unjust for Toyota to retain these wrongfully obtained profits.
27
28

GEORGIA

VIOLATION OF GEORGIA'S UNIFORM DECEPTIVE TRADE PRACTICES ACT

910. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

912. Toyota's actions as set forth above occurred in the conduct of trade or commerce.

915. Toyota's conduct proximately caused the injuries to Plaintiffs and the Class.

917. Pursuant to GA. CODE ANN. § 10-1-370, Plaintiffs will serve the Georgia Attorney General with a copy of this complaint as Plaintiffs seek injunctive relief.

919. The conduct of Toyota as set forth herein constitutes unfair or deceptive acts or practices, including, but not limited to, Toyota's manufacture and sale of vehicles with a sudden acceleration defect that lack brake-override or other effective fail-safe mechanisms, which Toyota failed to adequately investigate, disclose and remedy, and its misrepresentations and omissions regarding the safety and reliability of its vehicles.

921. Toyota's actions impact the public interest because Plaintiffs were injured in exactly the same way as millions of others purchasing and/or leasing

1 Toyota vehicles as a result of Toyota's generalized course of deception. All of the
2 wrongful conduct alleged herein occurred, and continues to occur, in the conduct of
3 Toyota's business.

4 922. Plaintiffs and the Class were injured as a result of Defendant's conduct.
5 Plaintiffs overpaid for their Defective Vehicles and did not receive the benefit of
6 their bargain, and their vehicles have suffered a diminution in value.

7 923. Toyota's conduct proximately caused the injuries to Plaintiffs and the
8 Class.

9 924. Toyota is liable to Plaintiffs and the Class for damages in amounts to be
10 proven at trial, including attorneys' fees, costs, and treble damages.

11 925. Pursuant to GA. CODE ANN. § 10-1-390, Plaintiffs will serve the Georgia
12 Attorney General with a copy of this complaint as Plaintiffs seek injunctive relief.

13
14
15 **COUNT III**

16 **BREACH OF EXPRESS WARRANTY**

17 **(Ga. Code Ann. § 11-2-313)**

18 926. Plaintiffs reallege and incorporate by reference all paragraphs as though
19 fully set forth herein.

20 927. Toyota is and was at all relevant times a merchant with respect to motor
21 vehicles.

22 928. In the course of selling its vehicles, Toyota expressly warranted in
23 writing that the Vehicles were covered by a Basic Warranty.

24 929. Toyota breached the express warranty to repair and adjust to correct
25 defects in materials and workmanship of any part supplied by Toyota. Toyota has
26
27
28

1 not repaired or adjusted, and has been unable to repair or adjust, the Vehicles'
2 materials and workmanship defects.

3 930. In addition to this Basic Warranty, Toyota expressly warranted several
4 attributes, characteristics and qualities, as set forth above.

5
6 931. . These warranties are only a sampling of the numerous warranties
7 that Toyota made relating to safety, reliability and operation, which are more fully
8 outlined in Section IV.A., *supra*. Generally these express warranties promise
9 heightened, superior, and state-of-the-art safety, reliability, performance standards,
10 and promote the benefits of ETCS. These warranties were made, *inter alia*, in
11 advertisements, in Toyota's "e brochures," and in uniform statements provided by
12 Toyota to be made by salespeople. These affirmations and promises were part of the
13 basis of the bargain between the parties.
14

15 932. 7. These additional warranties were also breached because the
16 Defective Vehicles were not fully operational, safe, or reliable (and remained so
17 even after the problems were acknowledged and a recall "fix" was announced), nor
18 did they comply with the warranties expressly made to purchasers or lessees. Toyota
19 did not provide at the time of sale, and has not provided since then, vehicles
20 conforming to these express warranties.
21

22 933. Furthermore, the limited warranty of repair and/or adjustments to
23 defective parts, fails in its essential purpose because the contractual remedy is
24 insufficient to make the Plaintiffs and the Class whole and because the Defendants
25 have failed and/or have refused to adequately provide the promised remedies within
26 a reasonable time.
27
28

1 934. Accordingly, recovery by the Plaintiffs is not limited to the limited
2 warranty of repair or adjustments to parts defective in materials or workmanship, and
3 Plaintiffs seek all remedies as allowed by law.

4 935. Also, as alleged in more detail herein, at the time that Defendants
5 warranted and sold the vehicles they knew that the vehicles did not conform to the
6 warranties and were inherently defective, and Defendants wrongfully and
7 fraudulently misrepresented and/or concealed material facts regarding their vehicles.
8 Plaintiffs and the Class were therefore induced to purchase the vehicles under false
9 and/or fraudulent pretenses.

10 936. Moreover, many of the damages flowing from the Defective Vehicles
11 cannot be resolved through the limited remedy of “replacement or adjustments,” as
12 those incidental and consequential damages have already been suffered due to
13 Defendants’ fraudulent conduct as alleged herein, and due to their failure and/or
14 continued failure to provide such limited remedy within a reasonable time, and any
15 limitation on Plaintiffs’ and the Class’ remedies would be insufficient to make
16 Plaintiffs and the Class whole.

17 937. Finally, due to the Defendants’ breach of warranties as set forth herein,
18 Plaintiffs and the Class assert as an additional and/or alternative remedy, as set forth
19 in GA. CODE ANN. § 11-2-608, for a revocation of acceptance of the goods, and for a
20 return to Plaintiffs and to the Class of the purchase price of all vehicles currently
21 owned.

22 938. Toyota was provided notice of these issues by numerous complaints
23 filed against it, including the instant complaint, and by numerous individual letters
24 and communications sent by Plaintiffs and the Class before or within a reasonable
25

1 amount of time after Toyota issued the recall and the allegations of vehicle defects
2 became public.

3 939. As a direct and proximate result of Toyota's breach of express
4 warranties, Plaintiffs and the Class have been damaged in an amount to be
5 determined at trial.
6

7 **COUNT IV**

8 **BREACH OF THE IMPLIED WARRANTY OF MERCHANTABILITY**

9 **(Ga. Code Ann. § 11-2-314)**

10 940. Plaintiffs reallege and incorporate by reference all paragraphs as though
11 fully set forth herein.
12

13 941. Toyota is and was at all relevant times a merchant with respect to motor
14 vehicles.

15 942. A warranty that the Defective Vehicles were in merchantable condition
16 is implied by law in the instant transactions, pursuant to GA. CODE ANN. § 11-2-314.

17 943. These vehicles, when sold and at all times thereafter, were not in
18 merchantable condition and are not fit for the ordinary purpose for which cars are
19 used. Specifically, the Defective Vehicles are inherently defective in that there are
20 defects in the vehicle control systems that permit sudden unintended acceleration to
21 occur; the Defective Vehicles do not have an adequate fail-safe to protect against
22 such SUA events, nor do they have a brake-override; and the ETCS system was not
23 adequately tested.
24

25 944. Toyota was provided notice of these issues by numerous complaints
26 filed against it, including the instant complaint, and by numerous individual letters
27 and communications sent by Plaintiffs and the Class before or within a reasonable
28

1 amount of time after Toyota issued the recall and the allegations of vehicle defects
2 became public.

3 945. Plaintiffs and the Class have had sufficient dealings with either the
4 Defendants or their agents (dealerships) to establish privity of contract between
5 Plaintiffs and the Class. Notwithstanding this, privity is not required in this case
6 because Plaintiffs and the Class are intended third-party beneficiaries of contracts
7 between Toyota and its dealers; specifically, they are the intended beneficiaries of
8 Toyota's implied warranties. The dealers were not intended to be the ultimate
9 consumers of the Defective Vehicles and have no rights under the warranty
10 agreements provided with the Defective Vehicles; the warranty agreements were
11 designed for and intended to benefit the ultimate consumers only. Finally, privity is
12 also not required because Plaintiffs' and Class members' Toyotas are dangerous
13 instrumentalities due to the aforementioned defects and nonconformities.
14

15
16 946. As a direct and proximate result of Toyota's breach of the warranties of
17 merchantability, Plaintiffs and the Class have been damaged in an amount to be
18 proven at trial.
19

20 **COUNT V**

21 **REVOCATION OF ACCEPTANCE**

22 **(Ga. Code Ann. § 11-2-608)**

23 947. Plaintiffs reallege and incorporate by reference all paragraphs as though
24 fully set forth herein.

25 948. Plaintiffs identified above demanded revocation and the demands were
26 refused.
27
28

1 949. Plaintiffs and the Class had no knowledge of such defects and
2 nonconformities, were unaware of these defects, and reasonably could not have
3 discovered them when they purchased or leased their automobiles from Toyota. On
4 the other hand, Toyota was aware of the defects and nonconformities at the time of
5 sale and thereafter.

7 950. Acceptance was reasonably induced by the difficulty of discovery of the
8 defects and nonconformities before acceptance.

9 951. There has been no change in the condition of Plaintiffs' vehicles not
10 caused by the defects and nonconformities.

11 952. When Plaintiffs sought to revoke acceptance, Toyota refused to accept
12 return of the Defective Vehicles and to refund Plaintiffs' purchase price and monies
13 paid.

14 953. Plaintiffs and the Class would suffer economic hardship if they returned
15 their vehicles but did not receive the return of all payments made by them. Because
16 Toyota is refusing to acknowledge any revocation of acceptance and return
17 immediately any payments made, Plaintiffs and the Class have not re-accepted their
18 Defective Vehicles by retaining them.

19 954. These defects and nonconformities substantially impaired the value of
20 the Defective Vehicles to Plaintiffs and the Class. This impairment stems from two
21 basic sources. First, the Defective Vehicles fail in their essential purpose because
22 they present an unreasonably high risk of sudden unintended acceleration (a risk
23 acknowledged by Toyota's recall), rendering them unsafe in a very material way.
24 Second, the repair and adjust warranty has failed of its essential purpose because
25 Toyota cannot repair or adjust the Defective Vehicles.

1 955. Plaintiffs and the Class provided notice of their intent to seek revocation
2 of acceptance by a class-action lawsuit seeking such relief. In addition, Plaintiffs
3 (and many Class members) have requested that Toyota accept return of their vehicles
4 and return all payments made. Plaintiffs on behalf of themselves and the Class
5 hereby demand revocation and tender their Defective Vehicles.
6

7 956. Plaintiffs and the Class would suffer economic hardship if they returned
8 their vehicles but did not receive the return of all payments made by them. Because
9 Toyota is refusing to acknowledge any revocation of acceptance and return
10 immediately any payments made, Plaintiffs and the Class have not re-accepted their
11 Defective Vehicles by retaining them, as they must continue using them due to the
12 financial burden of securing alternative means of transport for an uncertain and
13 substantial period of time.
14

15 957. Finally, due to the Defendants' breach of warranties as set forth herein,
16 Plaintiffs and the Plaintiff Class assert as an additional and/or alternative remedy, as
17 set forth in GA. CODE ANN. § 11-2-608, for a revocation of acceptance of the goods,
18 and for a return to Plaintiffs and to the Class of the purchase price of all vehicles
19 currently owned.
20

21 958. Consequently, Plaintiffs and the Class are entitled to revoke their
22 acceptances, receive all payments made to Toyota, and to all incidental and
23 consequential damages, including the costs associated with purchasing safer vehicles,
24 and all other damages allowable under law, all in amounts to be proven at trial.
25
26
27
28

COUNT VI

BREACH OF CONTRACT/Common Law Warranty

959. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

960. To the extent Toyota's repair or adjust commitment is deemed not to be a warranty under Georgia's Commercial Code, Plaintiffs plead in the alternative under common law warranty and contract law. Toyota limited the remedies available to Plaintiffs and the Class to just repairs and adjustments needed to correct defects in materials or workmanship of any part supplied by Toyota, and/or warranted the quality or nature of those services to Plaintiffs.

961. Toyota breached this warranty or contract obligation by failing to repair the Defective Vehicles evidencing a sudden unintended acceleration problem, including those that were recalled, or to replace them.

962. As a direct and proximate result of Defendants' breach of contract or common law warranty, Plaintiffs and the Class have been damaged in an amount to be proven at trial, which shall include, but is not limited to, all compensatory damages, incidental and consequential damages, and other damages allowed by law.

COUNT VII

FRAUD BY CONCEALMENT

(Ga. Code Ann. § 51-6-2)

963. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

964. As set forth above, Defendants concealed and/or suppressed material facts concerning the safety of their vehicles.

1 965. Defendants had a duty to disclose these safety issues because they
2 consistently marketed their vehicles as safe and proclaimed that safety is one of
3 Toyota's highest corporate priorities. Once Defendants made representations to the
4 public about safety, Defendants were under a duty to disclose these omitted facts,
5 because where one does speak one must speak the whole truth and not conceal any
6 facts which materially qualify those facts stated. One who volunteers information
7 must be truthful, and the telling of a half-truth calculated to deceive is fraud.
8

9 966. In addition, Defendants had a duty to disclose these omitted material
10 facts because they were known and/or accessible only to Defendants who have
11 superior knowledge and access to the facts, and Defendants knew they were not
12 known to or reasonably discoverable by Plaintiffs and the Class. These omitted facts
13 were material because they directly impact the safety of the Defective Vehicles.
14 Whether or not a vehicle accelerates only at the driver's command, and whether a
15 vehicle will stop or not upon application of the brake by the driver, are material
16 safety concerns. Defendants possessed exclusive knowledge of the defects rendering
17 Defective Vehicles inherently more dangerous and unreliable than similar vehicles.
18

19 967. Defendants actively concealed and/or suppressed these material facts, in
20 whole or in part, with the intent to induce Plaintiffs and the Class to purchase
21 Defective Vehicles at a higher price for the vehicles, which did not match the
22 vehicles' true value.
23

24 968. Defendants still have not made full and adequate disclosure and
25 continue to defraud Plaintiffs and the Class.
26

27 969. Plaintiffs and the Class were unaware of these omitted material facts
28 and would not have acted as they did if they had known of the concealed and/or

1 suppressed facts. Plaintiffs' and the Class' actions were justified. Defendants were
2 in exclusive control of the material facts and such facts were not known to the public
3 or the Class.

4 970. As a result of the concealment and/or suppression of the facts, Plaintiffs
5 and the Class sustained damage. For those Plaintiffs and the Class who elect to
6 affirm the sale, these damages, include the difference between the actual value of
7 that which Plaintiffs and the Class paid and the actual value of that which they
8 received, together with additional damages arising from the sales transaction,
9 amounts expended in reliance upon the fraud, compensation for loss of use and
10 enjoyment of the property, and/or lost profits. For those Plaintiffs and the Class who
11 want to rescind the purchase, then those Plaintiffs and the Class are entitled to
12 restitution and consequential damages.
13
14

15 971. Defendants' acts were done maliciously, oppressively, deliberately, with
16 intent to defraud, and in reckless disregard of Plaintiffs' and the Class' rights and
17 well-being to enrich Defendants. Defendants' conduct warrants an assessment of
18 punitive damages in an amount sufficient to deter such conduct in the future, which
19 amount is to be determined according to proof.
20

21 **COUNT VIII**

22 **UNJUST ENRICHMENT**

23 **(Based On Georgia Law)**

24 972. Plaintiffs reallege and incorporate by reference all paragraphs as though
25 fully set forth herein.
26

27 973. Toyota had knowledge of the safety defects in its vehicles, which it
28 failed to disclose to Plaintiffs and the Class.

1 974. As a result of their wrongful and fraudulent acts and omissions, as set
2 forth above, pertaining to the design defect of their vehicles and the concealment of
3 the defect, Toyota charged a higher price for their vehicles than the vehicles' true
4 value and Toyota obtained monies which rightfully belong to Plaintiffs.

5
6 975. Toyota appreciated, accepted and retained the non-gratuitous benefits
7 conferred by Plaintiffs and other Class members, who without knowledge of the safety
8 defects paid a higher price for vehicles which actually had lower values. It would be
9 inequitable and unjust for Toyota to retain these wrongfully obtained profits.

10 976. Plaintiffs, therefore, are entitled to restitution and seek an order
11 establishing Toyota as constructive trustees of the profits unjustly obtained, plus
12 interest.
13

14 **HAWAII**

15 **COUNT I**

16 **UNFAIR COMPETITION AND PRACTICES**

17 **(Haw. Rev. Stat. § 480, *et seq.*)**

18 977. Plaintiffs reallege and incorporate by reference all paragraphs as though
19 fully set forth herein.
20

21 978. Hawaii's Revised Statute § 480-2(a) prohibits "unfair methods of
22 competition and unfair or deceptive acts or practices in the conduct of any trade or
23 commerce...."

24 979. Toyota's conduct as set forth herein constitutes unfair methods of
25 competition and unfair or deceptive acts or practices in violation of HAW. REV. STAT.
26 § 480-2, because Toyota's acts and practices, including the manufacture and sale of
27 vehicles with a sudden acceleration defect that lack brake override or other effective
28

1 fail-safe mechanism, and Toyota's failure to adequately investigate, disclose and
2 remedy and Toyota's misrepresentations and omissions regarding the safety and
3 reliability of its vehicles, offend established public policy, and because the harm they
4 cause to consumers greatly outweighs any benefits associated with those practices.
5 Toyota's conduct has also impaired competition within the automotive vehicles
6 market and has prevented Plaintiffs from making fully informed decisions about
7 whether to purchase or lease Defective Vehicles and/or the price to be paid to
8 purchase or lease Defective Vehicles.
9

10 980. Toyota's misrepresentations and omissions regarding the safety and
11 reliability of its Defective Vehicles were material and caused Plaintiffs to purchase
12 or lease vehicles they would not have otherwise purchased or leased, or paid as much
13 for, had Plaintiffs known the vehicles were defective.
14

15 981. Toyota's acts or practices as set forth above occurred in the conduct of
16 trade or commerce.

17 982. Plaintiffs and the Class have suffered injury, including the loss of
18 money or property, as a result of Toyota's unfair methods of competition and unfair
19 or deceptive acts or practices.
20

21 983. In addition to damages in amounts to be proven at trial, Plaintiffs and
22 the Class seek attorneys' fees, costs of suit and treble damages.

23 984. Plaintiffs and the Class also seek injunctive relief to enjoin Toyota from
24 continuing its unfair competition and unfair or deceptive acts or practices.
25
26
27
28

COUNT II

**VIOLATION OF HAWAII'S UNIFORM DECEPTIVE
TRADE PRACTICE ACT**

(Hawaii Rev. Stat. § 481A, *et seq.*)

985. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

986. 2. Toyota participated in unfair or deceptive acts or practices that violated the Uniform Deceptive Trade Practice Act (“UDAP”), HAW. REV. STAT. § 481A, *et seq.*, as described herein.

987. By failing to disclose and actively concealing the dangerous risk of throttle control failure and the lack of adequate fail-safe mechanisms in Defective Vehicles equipped with ETCS, Toyota engaged in deceptive business practices prohibited by the UDAP, HAW. REV. STAT. § 481A, *et seq.*, including (1) representing that Defective Vehicles have characteristics, uses, benefits, and qualities which they do not have, (2) representing that Defective Vehicles are of a particular standard, quality, and grade when they are not and (3) advertising Defective Vehicles with the intent not to sell them as advertised.

988. As alleged above, Toyota made numerous material statements about the safety and reliability of Defective Vehicles that were either false or misleading. Each of these statements contributed to the deceptive context of Toyota’s unlawful advertising and representations as a whole.

989. 5. Toyota knew that the ETCS in Defective Vehicles was defectively designed or manufactured, would fail without warning, and was not suitable for its intended use of regulating throttle position and vehicle speed based on

1 driver commands. Toyota nevertheless failed to warn Plaintiffs about these inherent
2 dangers despite having a duty to do so.

3 990. Toyota owed Plaintiffs a duty to disclose the defective nature of
4 Defective Vehicles, including the dangerous risk of throttle control failure, the ETCS
5 defects, and the lack of adequate fail-safe mechanisms, because they:
6

7 a. Possessed exclusive knowledge of the defects rendering
8 Defective Vehicles inherently more dangerous and unreliable than similar vehicles;

9 b. Intentionally concealed the hazardous situation with Defective
10 Vehicles through their deceptive marketing campaign and recall program that they
11 designed to hide the life-threatening problems from Plaintiffs; and/or
12

13 c. Made incomplete representations about the safety and reliability of
14 Defective Vehicles generally, and ETCS in particular, while purposefully withholding
15 material facts from Plaintiffs that contradicted these representations.

16 991. Defective Vehicles equipped with ETCS pose an unreasonable risk of
17 death or serious bodily injury to Plaintiffs, passengers, other motorists, pedestrians,
18 and the public at large, because they are susceptible to incidents of sudden
19 unintended acceleration.
20

21 992. Whether or not a vehicle (a) accelerates only when commanded to do so
22 and (b) decelerates and stops when commanded to do so are facts that a reasonable
23 consumer would consider important in selecting a vehicle to purchase or lease.
24 When Plaintiffs bought a Toyota Vehicle for personal, family, or household
25 purposes, they reasonably expected the vehicle would (a) not accelerate unless
26 commanded to do so by application of the accelerator pedal or other driver controlled
27
28

1 means; (b) decelerate to a stop when the brake pedal was applied, and was equipped
2 with any necessary fail-safe mechanisms including a brake-override.

3 993. Toyota's unfair or deceptive acts or practices were likely to and did in
4 fact deceive reasonable consumers, including Plaintiffs, about the true safety and
5 reliability of the Defective Vehicles.
6

7 994. As a result of its violations of the UDAP detailed above, Toyota caused
8 actual damage to Plaintiffs and, if not stopped, will continue to harm Plaintiffs.
9 Plaintiffs currently own or lease, or within the class period have owned or leased,
10 Defective Vehicles that are defective and inherently unsafe. ETCS defects and the
11 resulting unintended acceleration incidents have caused the value of Defective
12 Vehicles to plummet.
13

14 995. Plaintiffs risk irreparable injury as a result of Toyota's acts and
15 omissions in violation of the UDAP, and these violations present a continuing risk to
16 Plaintiffs as well as to the general public.

17 996. Plaintiffs seek monetary damages and an order enjoining Defendants'
18 unfair or deceptive acts or practices, restitution, punitive damages, costs of Court,
19 attorney's fees and any other just and proper relief available under the UDAP.
20

21 **COUNT III**

22 **BREACH OF EXPRESS WARRANTY**

23 **(Hawaii Rev. Stat. § 490:2-313)**

24 997. Plaintiffs reallege and incorporate by reference all paragraphs as though
25 fully set forth herein.
26

27 998. Toyota is and was at all relevant times a merchant with respect to motor
28 vehicles.

1 999. In the course of selling its vehicles, Toyota expressly warranted in
2 writing that the Vehicles were covered by a Basic Warranty.

3 1000. Toyota breached the express warranty to repair and adjust to correct
4 defects in materials and workmanship of any part supplied by Toyota. Toyota has
5 not repaired or adjusted, and has been unable to repair or adjust, the Vehicles'
6 materials and workmanship defects.
7

8 1001. In addition to this Basic Warranty, Toyota expressly warranted several
9 attributes, characteristics and qualities, as set forth above.

10 1002. These warranties are only a sampling of the numerous warranties that
11 Toyota made relating to safety, reliability and operation, which are more fully
12 outlined in Section IV.A., *supra*. Generally these express warranties promise
13 heightened, superior, and state-of-the-art safety, reliability, performance standards,
14 and promote the benefits of ETCS. These warranties were made, *inter alia*, in
15 advertisements, in Toyota's "e brochures," and in uniform statements provided by
16 Toyota to be made by salespeople. These affirmations and promises were part of the
17 basis of the bargain between the parties.
18

19 1003. These additional warranties were also breached because the Defective
20 Vehicles were not fully operational, safe, or reliable (and remained so even after the
21 problems were acknowledged and a recall "fix" was announced), nor did they
22 comply with the warranties expressly made to purchasers or lessees. Toyota did not
23 provide at the time of sale, and has not provided since then, vehicles conforming to
24 these express warranties.
25

26 1004. Furthermore, the limited warranty of repair and/or adjustments to
27 defective parts, fails in its essential purpose because the contractual remedy is
28

1 insufficient to make the Plaintiffs and the Class whole and because the Defendants
2 have failed and/or have refused to adequately provide the promised remedies within
3 a reasonable time.

4 1005. Accordingly, recovery by the Plaintiffs is not limited to the limited
5 warranty of repair or adjustments to parts defective in materials or workmanship, and
6 Plaintiffs seek all remedies as allowed by law.

7 1006. Also, as alleged in more detail herein, at the time that Defendants
8 warranted and sold the vehicles they knew that the vehicles did not conform to the
9 warranties and were inherently defective, and Defendants wrongfully and
10 fraudulently misrepresented and/or concealed material facts regarding their vehicles.
11 Plaintiffs and the Class were therefore induced to purchase the vehicles under false
12 and/or fraudulent pretenses.

13 1007. Moreover, many of the damages flowing from the Defective Vehicles
14 cannot be resolved through the limited remedy of “replacement or adjustments,” as
15 those incidental and consequential damages have already been suffered due to
16 Defendants’ fraudulent conduct as alleged herein, and due to their failure and/or
17 continued failure to provide such limited remedy within a reasonable time, and any
18 limitation on Plaintiffs’ and the Class’ remedies would be insufficient to make
19 Plaintiffs and the Class whole.

20 1008. Finally, due to the Defendants’ breach of warranties as set forth herein,
21 Plaintiffs and the Class assert as an additional and/or alternative remedy, as set forth
22 in HAW. REV. STAT. § 490:2-608, for a revocation of acceptance of the goods, and
23 for a return to Plaintiffs and to the Class of the purchase price of all vehicles
24
25
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1 currently owned and for such other incidental and consequential damages as allowed
2 under Hawaii law.

3 1009. Toyota was provided notice of these issues by numerous complaints
4 filed against it, including the instant complaint, and by numerous individual letters
5 and communications sent by Plaintiffs and the Class before or within a reasonable
6 amount of time after Toyota issued the recall and the allegations of vehicle defects
7 became public.

8
9 1010. As a direct and proximate result of Toyota's breach of express
10 warranties, Plaintiffs and the Class have been damaged in an amount to be
11 determined at trial.

12 **COUNT IV**

13 **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**

14 **(Haw. Rev. Stat. § 490:2-314)**

15
16 1011. Plaintiffs reallege and incorporate by reference all paragraphs as though
17 fully set forth herein.

18 1012. Toyota is and was at all relevant times a merchant with respect to motor
19 vehicles.

20
21 1013. A warranty that the Defective Vehicles were in merchantable condition
22 was implied by law in the instant transactions.

23 1014. These vehicles, when sold and at all times thereafter, were not in
24 merchantable condition and are not fit for the ordinary purpose for which cars are
25 used. Specifically, the Defective Vehicles are inherently defective in that there are
26 defects in the vehicle control systems that permit sudden unintended acceleration to
27 occur; the Defective Vehicles do not have an adequate fail-safe to protect against
28

1 such SUA events, nor do they have a brake-override; and the ETCS system was not
2 adequately tested.

3 1015. Toyota was provided notice of these issues by numerous complaints
4 filed against it, including the instant complaint, and by numerous individual letters
5 and communications sent by Plaintiffs and the Class before or within a reasonable
6 amount of time after Toyota issued the recall and the allegations of vehicle defects
7 became public.
8

9 1016. Privity is not required in this case because Plaintiffs and the Class are
10 intended third-party beneficiaries of contracts between Toyota and its dealers;
11 specifically, they are the intended beneficiaries of Toyota's implied warranties. The
12 dealers were not intended to be the ultimate consumers of the Defective Vehicles and
13 have no rights under the warranty agreements provided with the Defective Vehicles;
14 the warranty agreements were designed for and intended to benefit the ultimate
15 consumers only.
16

17 1017. As a direct and proximate result of Toyota's breach of the warranties of
18 merchantability, Plaintiffs and the Class have been damaged in an amount to be
19 proven at trial.
20

21 **COUNT V**

22 **REVOCATION OF ACCEPTANCE**

23 **(Haw. Rev. Stat. § 490:2-608)**

24 1018. Plaintiffs reallege and incorporate by reference all paragraphs as though
25 fully set forth herein.
26

27 1019. Plaintiffs identified above demanded revocation and the demands were
28 refused.

1 1020. Plaintiffs and the Class had no knowledge of such defects and
2 nonconformities, were unaware of these defects, and reasonably could not have
3 discovered them when they purchased or leased their automobiles from Toyota. On
4 the other hand, Toyota was aware of the defects and nonconformities at the time of
5 sale and thereafter.

7 1021. Acceptance was reasonably induced by the difficulty of discovery of the
8 defects and nonconformities before acceptance.

9 1022. There has been no change in the condition of Plaintiffs' vehicles not
10 caused by the defects and nonconformities.

11 1023. When Plaintiffs sought to revoke acceptance, Toyota refused to accept
12 return of the Defective Vehicles and to refund Plaintiffs' purchase price and monies
13 paid.

14 1024. Plaintiffs and the Class would suffer economic hardship if they returned
15 their vehicles but did not receive the return of all payments made by them. Because
16 Toyota is refusing to acknowledge any revocation of acceptance and return
17 immediately any payments made, Plaintiffs and the Class have not re-accepted their
18 Defective Vehicles by retaining them.

19 1025. These defects and nonconformities substantially impaired the value of
20 the Defective Vehicles to Plaintiffs and the Class. This impairment stems from two
21 basic sources. First, the Defective Vehicles fail in their essential purpose because
22 they present an unreasonably high risk of sudden unintended acceleration (a risk
23 acknowledged by Toyota's recall), rendering them unsafe in a very material way.
24 Second, the repair and adjust warranty has failed of its essential purpose because
25 Toyota cannot repair or adjust the Defective Vehicles.

1 1026. Plaintiffs and the Class provided notice of their intent to seek revocation
2 of acceptance by a class-action lawsuit seeking such relief. In addition, Plaintiffs
3 (and many Class members) have requested that Toyota accept return of their vehicles
4 and return all payments made. Plaintiffs on behalf of themselves and the Class
5 hereby demand revocation and tender their Defective Vehicles.
6

7 1027. Plaintiffs and the Class would suffer economic hardship if they returned
8 their vehicles but did not receive the return of all payments made by them. Because
9 Toyota is refusing to acknowledge any revocation of acceptance and return
10 immediately any payments made, Plaintiffs and the Class have not re-accepted their
11 Defective Vehicles by retaining them, as they must continue using them due to the
12 financial burden of securing alternative means of transport for an uncertain and
13 substantial period of time.
14

15 1028. Finally, due to the Defendants' breach of warranties as set forth herein,
16 Plaintiffs and the Class assert as an additional and/or alternative remedy, as set forth
17 in HAW. REV. STAT. § 490:2-608, for a revocation of acceptance of the goods, and
18 for a return to Plaintiffs and to the Class of the purchase price of all vehicles
19 currently owned and for such other incidental and consequential damages as allowed
20 under HAW. REV. STAT. § 490:2-608.
21

22 1029. Consequently, Plaintiffs and the Class are entitled to revoke their
23 acceptances, receive all payments made to Toyota, and to all incidental and
24 consequential damages, including the costs associated with purchasing safer vehicles,
25 and all other damages allowable under law, all in amounts to be proven at trial.
26
27
28

COUNT VI

BREACH OF CONTRACT/COMMON LAW WARRANTY

(Based On Hawaii Law)

1030. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1031. To the extent Toyota's repair or adjust commitment is deemed not to be a warranty under Hawaii's Commercial Code, Plaintiffs plead in the alternative under common law warranty and contract law. Toyota limited the remedies available to Plaintiffs and the Class to just repairs and adjustments needed to correct defects in materials or workmanship of any part supplied by Toyota, and/or warranted the quality or nature of those services to Plaintiffs.

1032. 3. Toyota breached this warranty or contract obligation by failing to repair the Defective Vehicles evidencing a sudden unintended acceleration problem, including those that were recalled, or to replace them.

1033. As a direct and proximate result of Defendants' breach of contract or common law warranty, Plaintiffs and the Class have been damaged in an amount to be proven at trial, which shall include, but is not limited to, all compensatory damages, incidental and consequential damages, and other damages allowed by law.

COUNT VII

UNJUST ENRICHMENT

(Based On Hawaii Law)

1034. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1 1035. As a result of their wrongful and fraudulent acts and omissions, as set
2 forth above, pertaining to the design defect of their vehicles and the concealment of
3 the defect, Defendants charged a higher price for their vehicles than the vehicles'
4 true value and Defendants obtained monies which rightfully belong to Plaintiffs.
5

6 1036. Defendants enjoyed the benefit of increased financial gains, to the
7 detriment of Plaintiffs and other Class members, who paid a higher price for vehicles
8 which actually had lower values. It would be inequitable and unjust for Defendants
9 to retain these wrongfully obtained profits.

10 1037. Plaintiffs, therefore, seek an order establishing Defendants as
11 constructive trustees of the profits unjustly obtained, plus interest.
12

13 **IDAHO**

14 **COUNT I**

15 **VIOLATIONS OF THE IDAHO CONSUMER PROTECTION ACT**

16 **(Idaho Civ. Code § 48-601, *et seq.*)**

17 1038. Plaintiffs reallege and incorporate by reference all paragraphs as though
18 fully set forth herein.
19

20 1039. Defendants are “persons” under IDAHO CIVIL CODE § 48-602(1).

21 1040. Plaintiffs are “consumers” who purchased or leased one or more
22 Defective Vehicles.

23 1041. Defendants both participated in misleading, false, or deceptive acts that
24 violated the Idaho Consumer Protection Act (“ICPA”), IDAHO CIV. CODE § 48-601,
25 *et seq.*, as described above and below. Defendants each are directly liable for these
26 violations of law. TMC also is liable for TMS’s violations of the ICPA because
27
28

1 TMS acts as TMC's general agent in the United States for purposes of sales and
2 marketing.

3 1042. By failing to disclose and actively concealing the dangerous risk of
4 throttle control failure and the lack of adequate fail-safe mechanisms in Defective
5 Vehicles equipped with ETCS, Defendants engaged in deceptive business practices
6 prohibited by the ICPA, including (1) representing that Defective Vehicles have
7 characteristics, uses, and benefits which they do not have, (2) representing that
8 Defective Vehicles are of a particular standard, quality, and grade when they are not,
9 (3) advertising Defective Vehicles with the intent not to sell them as advertised, and
10 (4) engaging in acts or practices which are otherwise misleading, false, or deceptive
11 to the consumer.
12

13
14 1043. As alleged above, Defendants made numerous material statements about
15 the safety and reliability of Defective Vehicles that were either false or misleading.
16 Each of these statements contributed to the deceptive context of TMC's and TMS's
17 unlawful advertising and representations as a whole.
18

19 1044. Defendants knew that the ETCS in Defective Vehicles was defectively
20 designed or manufactured, would fail without warning, and was not suitable for its
21 intended use of regulating throttle position and vehicle speed based on driver
22 commands. Defendants nevertheless failed to warn Plaintiffs about these inherent
23 dangers despite having a duty to do so.

24 1045. Defendants each owed Plaintiffs a duty to disclose the defective nature
25 of Defective Vehicles, including the dangerous risk of throttle control failure, the
26 ETCS defects, and the lack of adequate fail-safe mechanisms, because they:
27
28

1 a. Possessed exclusive knowledge of the defects rendering
2 Defective Vehicles inherently more dangerous and unreliable than similar vehicles;

3 b. Intentionally concealed the hazardous situation with Defective
4 Vehicles through their deceptive marketing campaign and recall program that they
5 designed to hide the life-threatening problems from Plaintiffs; and/or
6

7 c. Made incomplete representations about the safety and reliability
8 of Defective Vehicles generally, and ETCS in particular, while purposefully
9 withholding material facts from Plaintiffs that contradicted these representations.

10 1046. Defective Vehicles equipped with ETCS pose an unreasonable risk of
11 death or serious bodily injury to Plaintiffs, passengers, other motorists, pedestrians,
12 and the public at large, because they are susceptible to incidents of sudden
13 unintended acceleration.
14

15 1047. Whether or not a vehicle (a) accelerates only when commanded to do so
16 and (b) decelerates and stops when commanded to do so are facts that a reasonable
17 consumer would consider important in selecting a vehicle to purchase or lease.
18 When Plaintiffs bought a Toyota Vehicle for personal, family, or household
19 purposes, they reasonably expected the vehicle would (a) not accelerate unless
20 commanded to do so by application of the accelerator pedal or other driver-
21 controlled means; (b) decelerate to a stop when the brake pedal was applied, and was
22 equipped with any necessary fail-safe mechanisms including a brake-override.
23

24 1048. TMC's and TMS's misleading, false, or deceptive acts or practices were
25 likely to and did in fact deceive reasonable consumers, including Plaintiffs, about the
26 true safety and reliability of Defective Vehicles.
27
28

1 1049. As a result of its violations of the ICPA detailed above, Defendants
2 caused actual damage to Plaintiffs and, if not stopped, will continue to harm
3 Plaintiffs. Plaintiffs currently own or lease, or within the class period have owned or
4 leased, Defective Vehicles that are defective and inherently unsafe. ETCS defects
5 and the resulting unintended acceleration incidents have caused the value of
6 Defective Vehicles to plummet.
7

8 1050. Plaintiffs risk irreparable injury as a result of TMC's and TMS's acts
9 and omissions in violation of the ICPA, and these violations present a continuing risk
10 to Plaintiffs as well as to the general public.
11

12 1051. Plaintiffs also seek punitive damages against Defendants because each
13 carried out despicable conduct with willful and conscious disregard of the rights and
14 safety of others, subjecting Plaintiffs to cruel and unjust hardship as a result.
15 Defendants intentionally and willfully misrepresented the safety and reliability of
16 Defective Vehicles, deceived Plaintiffs on life-or-death matters, and concealed
17 material facts that only it knew, all to avoid the expense and public relations
18 nightmare of correcting a deadly flaw in the Defective Vehicles it repeatedly
19 promised Plaintiffs were safe. Defendants' unlawful conduct constitutes malice,
20 oppression, and fraud warranting punitive damages.
21

22 1052. The recalls and repairs instituted by Toyota have not been adequate.
23 Defective Vehicles still are defective and the "confidence" booster offer of an
24 override is not an effective remedy and is not offered to all Defective Vehicles,
25 including the 2002-2007 Camry.
26

27 1053. Plaintiffs further seek an order enjoining Defendants' unfair or
28 deceptive acts or practices, restitution, punitive damages, costs of Court, attorney's

1 fees under IDAHO CIVIL CODE § 48-608, and any other just and proper relief available
2 under the ICPA.

3
4 **COUNT II**
5 **BREACH OF EXPRESS WARRANTY**
6 **(Idaho Com. Code § 28-2-313)**

7 1054. Plaintiffs reallege and incorporate by reference all paragraphs as though
8 fully set forth herein.

9 1055. Toyota is and was at all relevant times a merchant with respect to motor
10 vehicles under IDAHO COM. CODE § 28-2-104.

11 1056. Toyota dealerships who sold Defective Vehicles to Plaintiffs and the
12 Class acted as the agents of TMS and/or TMC. Plaintiffs and the Class therefore
13 were in a relationship of privity with Defendants, to the extent such a relationship is
14 required by IDAHO COM. CODE § 28-2-313.

15 1057. In the course of selling its vehicles, Toyota expressly warranted in
16 writing that the Vehicles were covered by a Basic Warranty.

17 1058. Toyota breached the express warranty to repair and adjust to correct
18 defects in materials and workmanship of any part supplied by Toyota. Toyota has
19 not repaired or adjusted, and has been unable to repair or adjust, the Vehicles'
20 materials and workmanship defects.

21 1059. In addition to this Basic Warranty, Toyota expressly warranted several
22 attributes, characteristics and qualities, as set forth above.

23 1060. These warranties are only a sampling of the numerous warranties that
24 Toyota made relating to safety, reliability and operation, which are more fully
25 outlined in Section IV.A., *supra*. Generally these express warranties promise
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28

1 heightened, superior, and state-of-the-art safety, reliability, performance standards,
2 and promote the benefits of ETCS. These warranties were made, *inter alia*, in
3 advertisements, in Toyota's "e-brochures," and in uniform statements provided by
4 Toyota to be made by salespeople. These affirmations and promises were part of the
5 basis of the bargain between the parties.
6

7 1061. These additional warranties were also breached because the Defective
8 Vehicles were not fully operational, safe, or reliable (and remained so even after the
9 problems were acknowledged and a recall "fix" was announced), nor did they
10 comply with the warranties expressly made to purchasers or lessees. Toyota did not
11 provide at the time of sale, and has not provided since then, vehicles conforming to
12 these express warranties.
13

14 1062. Furthermore, the limited warranty of repair and/or adjustments to
15 defective parts, fails in its essential purpose because the contractual remedy is
16 insufficient to make the Plaintiffs and the Class whole and because the Defendants
17 have failed and/or have refused to adequately provide the promised remedies within
18 a reasonable time.
19

20 1063. Accordingly, recovery by the Plaintiffs is not limited to the limited
21 warranty of repair or adjustments to parts defective in materials or workmanship, and
22 Plaintiffs seek all remedies as allowed by law.

23 1064. Also, as alleged in more detail herein, at the time that Defendants
24 warranted and sold the vehicles they knew that the vehicles did not conform to the
25 warranties and were inherently defective, and Defendants wrongfully and
26 fraudulently misrepresented and/or concealed material facts regarding their vehicles.
27 Plaintiffs and the Class were therefore induced to purchase the vehicles under false
28

1 and/or fraudulent pretenses. The enforcement under these circumstances of any
2 limitations whatsoever precluding the recovery of incidental and/or consequential
3 damages is unenforceable pursuant to IDAHO COM. CODE § 28-2-302(1).

4 1065. Moreover, many of the damages flowing from the Defective Vehicles
5 cannot be resolved through the limited remedy of “replacement or adjustments,” as
6 those incidental and consequential damages have already been suffered due to
7 Defendants’ fraudulent conduct as alleged herein, and due to their failure and/or
8 continued failure to provide such limited remedy within a reasonable time, and any
9 limitation on Plaintiffs’ and the Class’ remedies would be insufficient to make
10 Plaintiffs and the Class whole.
11

12 1066. Toyota was provided notice of these issues by numerous complaints
13 filed against it, including the instant complaint, and by numerous individual letters
14 and communications sent by Plaintiffs and the Class before or within a reasonable
15 amount of time after Toyota issued the recall and the allegations of vehicle defects
16 became public.
17

18 1067. As a direct and proximate result of Toyota’s breach of express
19 warranties, Plaintiffs and the Class have been damaged in an amount to be
20 determined at trial.
21

22 **COUNT III**

23 **BREACH OF THE IMPLIED WARRANTY OF MERCHANTABILITY**

24 **(Idaho Com. Code § 28-2-314)**

25 1068. Plaintiffs reallege and incorporate by reference all paragraphs as though
26 fully set forth herein.
27
28

1 1069. Toyota is and was at all relevant times a merchant with respect to motor
2 vehicles under IDAHO COM. CODE § 28-2-104.

3 1070. A warranty that the Defective Vehicles were in merchantable condition
4 was implied by law in the instant transaction, pursuant to IDAHO COM. CODE § 28-2-
5 314.

6 1071. These vehicles, when sold and at all times thereafter, were not in
7 merchantable condition and are not fit for the ordinary purpose for which cars are
8 used. Specifically, the Defective Vehicles are inherently defective in that there are
9 defects in the vehicle control systems that permit sudden unintended acceleration to
10 occur; the Defective Vehicles do not have an adequate fail-safe to protect against
11 such SUA events, nor do they have a brake-override; and the ETCS system was not
12 adequately tested.

13 1072. Toyota was provided notice of these issues by numerous complaints
14 filed against it, including the instant complaint, and by numerous individual letters
15 and communications sent by Plaintiffs and the Class before or within a reasonable
16 amount of time after Toyota issued the recall and the allegations of vehicle defects
17 became public.

18 1073. Plaintiffs and the Class have had sufficient direct dealings with either
19 the Defendants or their agents (dealerships) to establish privity of contract between
20 Plaintiffs and the Class. Notwithstanding this, privity is not required in this case
21 because Plaintiffs and the Class are intended third-party beneficiaries of contracts
22 between Toyota and its dealers; specifically, they are the intended beneficiaries of
23 Toyota's implied warranties. The dealers were not intended to be the ultimate
24 consumers of the Defective Vehicles and have no rights under the warranty
25
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1 agreements provided with the Defective Vehicles; the warranty agreements were
2 designed for and intended to benefit the ultimate consumers only.

3 1074. As a direct and proximate result of Toyota's breach of the warranties of
4 merchantability, Plaintiffs and the Class have been damaged in an amount to be
5 proven at trial.
6

7 **COUNT IV**

8 **BREACH OF CONTRACT/COMMON LAW WARRANTY**

9 **(Under Idaho Law)**

10 1075. Plaintiffs reallege and incorporate by reference all paragraphs as though
11 fully set forth herein.
12

13 1076. To the extent Toyota's repair or adjust commitment is deemed not to be
14 a warranty under Idaho's Commercial Code, Plaintiffs plead in the alternative under
15 common law warranty and contract law. Toyota limited the remedies available to
16 Plaintiffs and the Class to just repairs and adjustments needed to correct defects in
17 materials or workmanship of any part supplied by Toyota, and/or warranted the
18 quality or nature of those services to Plaintiffs.
19

20 1077. Toyota breached this warranty or contract obligation by failing to repair
21 the Defective Vehicles evidencing a sudden unintended acceleration problem,
22 including those that were recalled, or to replace them.

23 1078. As a direct and proximate result of Defendants' breach of contract or
24 common law warranty, Plaintiffs and the Class have been damaged in an amount to
25 be proven at trial, which shall include, but is not limited to, all compensatory
26 damages, incidental and consequential damages, and other damages allowed by law.
27
28

COUNT V
FRAUD BY CONCEALMENT
(Based On Idaho Law)

1079. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1080. As set forth above, Defendants concealed and/or suppressed material facts concerning the safety of their vehicles.

1081. Defendants had a duty to disclose these safety issues because they consistently marketed their vehicles as safe and proclaimed that safety is one of Toyota's highest corporate priorities. Once Defendants made representations to the public about safety, Defendants were under a duty to disclose these omitted facts, because where one does speak one must speak the whole truth and not conceal any facts which materially qualify those facts stated. One who volunteers information must be truthful, and the telling of a half-truth calculated to deceive is fraud.

1082. In addition, Defendants had a duty to disclose these omitted material facts because they were known and/or accessible only to Defendants who have superior knowledge and access to the facts, and Defendants knew they were not known to or reasonably discoverable by Plaintiffs and the Class. These omitted facts were material because they directly impact the safety of the Defective Vehicles. Whether or not a vehicle accelerates only at the driver's command, and whether a vehicle will stop or not upon application of the brake by the driver, are material safety concerns. Defendants possessed exclusive knowledge of the defects rendering Defective Vehicles inherently more dangerous and unreliable than similar vehicles.

1 1083. Defendants actively concealed and/or suppressed these material facts, in
2 whole or in part, with the intent to induce Plaintiffs and the Class to purchase
3 Defective Vehicles at a higher price for the vehicles, which did not match the
4 vehicles' true value.

5 1084. Defendants still have not made full and adequate disclosure and
6 continue to defraud Plaintiffs and the Class.
7

8 1085. Plaintiffs and the Class were unaware of these omitted material facts
9 and would not have acted as they did if they had known of the concealed and/or
10 suppressed facts. Plaintiffs' and the Class' actions were justified. Defendants were
11 in exclusive control of the material facts and such facts were not known to the public
12 or the Class.
13

14 1086. As a result of the concealment and/or suppression of the facts, Plaintiffs
15 and the Class sustained damage.

16 1087. Defendants' acts were done maliciously, oppressively, deliberately, with
17 intent to defraud, and in reckless disregard of Plaintiffs' and the Class' rights and
18 well-being to enrich Defendants. Defendants' conduct warrants an assessment of
19 punitive damages in an amount sufficient to deter such conduct in the future, which
20 amount is to be determined according to proof.
21

22 **COUNT VI**
23 **UNJUST ENRICHMENT**
24 **(Based On Idaho Law)**

25 1088. Plaintiffs reallege and incorporate by reference all paragraphs as though
26 fully set forth herein.
27
28

1 1089. As a result of their wrongful and fraudulent acts and omissions, as set
2 forth above, pertaining to the design defect of their vehicles and the concealment of
3 the defect, Defendants charged a higher price for their vehicles than the vehicles'
4 true value and Defendants obtained monies which rightfully belong to Plaintiffs.
5

6 1090. Defendants enjoyed the benefit of increased financial gains, to the
7 detriment of Plaintiffs and other Class members, who paid a higher price for vehicles
8 which actually had lower values. It would be inequitable and unjust for Defendants
9 to retain these wrongfully obtained profits.

10 1091. Plaintiffs, therefore, seek an order establishing Defendants as
11 constructive trustees of the profits unjustly obtained, plus interest.
12

13 **ILLINOIS**

14 **COUNT I**

15 **VIOLATION OF ILLINOIS CONSUMER FRAUD AND**
16 **DECEPTIVE BUSINESS PRACTICES ACT**

17 **(815 Ill. Comp. Stat. 505/1, *et seq.***
18 **and 720 Ill. Comp. Stat. 295/1A)**

19 1092. Plaintiffs reallege and incorporate by reference all paragraphs as though
20 fully set forth herein.

21 1093. The Illinois Consumer Fraud and Deceptive Business Practices Act, 815
22 ILL. COMP. STAT. 505/2 prohibits unfair or deceptive acts or practices in connection
23 with any trade or commerce. Specifically, the Act prohibits suppliers from
24 representing that their goods are of a particular quality or grade they are not.

25 1094. Defendants are "persons" as that term is defined in the Illinois
26 Consumer Fraud and Deceptive Practices Act, 815 ILL. COMP. STAT. 505/1(c).
27
28

1 1095. Plaintiffs are “consumers” as that term is defined in the Illinois
2 Consumer Fraud and Deceptive Practices Act, 815 ILL. COMP. STAT. 505/1(e).

3 1096. Defendants’ conduct caused Plaintiffs’ damages as alleged.

4 1097. As a result of the foregoing wrongful conduct of Defendants, Plaintiffs
5 and the Class have been damaged in an amount to be proven at trial, including, but
6 not limited to, actual damages, court costs, and reasonable attorneys’ fees pursuant to
7 815 ILL. COMP. STAT. 505/1, *et seq.*

9 **COUNT II**

10 **VIOLATION OF THE ILLINOIS UNIFORM DECEPTIVE TRADE**
11 **PRACTICES ACT**

12 **(815 Ill. Comp. Stat. 510/1, *et. seq.* and**
13 **720 Ill. Comp. Stat. 295/1A)**

14 1098. Plaintiffs reallege and incorporate by reference all paragraphs as though
15 fully set forth herein.

16 1099. 815 ILL. COMP. STAT. 510/2 provides that a “person engages in a
17 deceptive trade practice when, in the course of his or her business, vocation, or
18 occupation,” the person does any of the following: “(2) causes likelihood of
19 confusion or of misunderstanding as to the source, sponsorship, approval, or
20 certification of goods or services; ... (5) represents that goods or services have
21 sponsorship, approval, characteristics ingredients, uses, benefits, or quantities that
22 they do not have or that a person has a sponsorship, approval, status, affiliation, or
23 connection that he or she does not have; ... (7) represents that goods or services are
24 of a particular standard, quality, or grade or that goods are a particular style or
25 model, if they are of another; ... (9) advertises goods or services with intent not to
26
27
28

1 sell them as advertised; ... [and] (12) engages in any other conduct which similarly
2 creates a likelihood of confusion or misunderstanding.”

3 1100. Defendants are “persons” within the meaning of 815 ILL. COMP. STAT.
4 510/1(5).

5 1101. The vehicles sold to Plaintiffs were not of the particular sponsorship,
6 approval, characteristics, ingredients, uses benefits, or qualities represented by
7 Defendants.
8

9 1102. The vehicles sold to Plaintiffs were not of the particular standard,
10 quality, and/or grade represented by Defendants.

11 1103. Defendants conduct was knowing and/or intentional and/or with malice
12 and/or demonstrated a complete lack of care and/or reckless and/or was in conscious
13 disregard for the rights of Plaintiffs.
14

15 1104. As a result of the foregoing wrongful conduct of Defendants, Plaintiffs
16 have been damaged in an amount to proven at trial, including, but not limited to,
17 actual and punitive damages, equitable relief and reasonable attorneys’ fees.
18

19 **COUNT III**

20 **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**

21 **(810 Ill. Comp. Stat. 5/2-314**
22 **and 810 Ill. Comp. Stat. 5/2A-212)**

23 1105. Plaintiffs reallege and incorporate by reference all paragraphs as though
24 fully set forth herein.

25 1106. Defendants impliedly warranted that their vehicles were of good and
26 merchantable quality and fit, and safe for their ordinary intended use – transporting
27
28

1 the driver and passengers in reasonable safety during normal operation, and without
2 unduly endangering them or members of the public.

3 1107. Defendants breached the implied warranty that the vehicle was
4 merchantable and safe for use as public transportation by marketing, advertising,
5 distributing and selling vehicles with the common design and manufacturing defect,
6 without incorporating adequate electronic or mechanical fail-safes, and while
7 misrepresenting the dangers of such vehicles to the public.
8

9 1108. These dangerous defects existed at the time the vehicles left
10 Defendants' manufacturing facilities and at the time they were sold to the Plaintiffs.
11

12 1109. These dangerous defects were the direct and proximate cause of
13 damages to the Plaintiffs.

14 **COUNT IV**

15 **BREACH OF EXPRESS WARRANTIES**

16 **(810 Ill. Comp. Stat. 5/2-313)**

17 1110. Plaintiffs reallege and incorporate by reference all paragraphs as though
18 fully set forth herein.
19

20 1111. Defendants expressly warranted – through statements and
21 advertisements – that the vehicles were of high quality, and at a minimum, would
22 actually work properly and safely.

23 1112. Defendants breached this warranty by knowingly selling to Plaintiffs
24 vehicles with dangerous defects, and which were not of high quality.

25 1113. Plaintiffs have been damaged as a direct and proximate result of the
26 breaches by Defendants in that the Defective Vehicles purchased by Plaintiffs were
27
28

1 and are worth far less than what the Plaintiffs paid to purchase, which was
2 reasonably foreseeable to Defendants.

3 **COUNT V**
4 **NEGLIGENCE**

5 **(Based On Illinois Law)**

6
7 1114. Plaintiffs reallege and incorporate by reference all paragraphs as though
8 fully set forth herein.

9 1115. Toyota is a manufacturer and supplier of automobiles.

10 1116. Defendants owed Plaintiffs a non-delegable duty to exercise ordinary
11 and reasonable care to properly design, engineer, and manufacture the vehicles
12 against foreseeable hazard and malfunctions including uncontrollable acceleration
13 and lack of proper fail-safe mechanisms.

14
15 1117. Defendants owed Plaintiffs a non-delegable duty to exercise ordinary
16 and reasonable care in designing, engineering, and manufacturing the vehicles so that
17 they would function normally, including that they would not accelerate out of control
18 and lack of proper fail-safe mechanisms.

19
20 1118. Defendants also owed – and owe – a continuing duty to notify Plaintiffs
21 of the problem at issue and to repair the dangerous defects.

22 1119. Defendants breached these duties of reasonable care by designing,
23 engineering and manufacturing vehicles that accelerated out of control without
24 proper fail-safe mechanisms, and breached their continuing duty to notify Plaintiffs
25 of these defects.
26
27
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1 1120. The foreseeable hazards and malfunctions included, but are not limited
2 to, the sudden and unanticipated and uncontrollable acceleration of these vehicles
3 and lack of proper fail-safe mechanisms.

4 1121. Plaintiffs did not and could not know of the intricacies of these defects
5 and their latent and dangerous manifestations, or the likelihood of harm there from
6 arising in the normal use of their vehicles.

7 1122. At all relevant times, there existed alternative designs and engineering
8 which were both technically and economically feasible. Further, any alleged benefits
9 associated with the defective designs are vastly outweighed by the real risks
10 associated with sudden and uncontrollable acceleration.

11 1123. The vehicles were defective as herein alleged at the time they left
12 Defendants' factories, and the vehicles reached Plaintiffs without substantial change
13 in the condition in which they were sold.

14 1124. As a direct and proximate result of Defendants' breaches, Plaintiffs
15 have suffered damages, including, but not limited to, diminution in value, return of
16 lease payments and penalties, and injunctive relief related to future lease payments or
17 penalties.

18 **COUNT VI**

19 **STRICT PRODUCT LIABILITY (DEFECTIVE DESIGN)**

20 **(Based On Illinois Law)**

21 1125. Plaintiffs reallege and incorporate by reference all paragraphs as though
22 fully set forth herein.

23 1126. Defendants are and have been at all times pertinent to this Complaint,
24 engaged in the business of designing, manufacturing, assembling, promoting,
25

1 advertising, distributing and selling Defective Vehicles in the United States,
2 including those owned or leased by the Plaintiffs and the Class.

3 1127. Defendants knew and anticipated that the vehicles owned or leased by
4 Plaintiffs and the Class would be sold to and operated by purchasers and/or eventual
5 owners or lessors of Defendants' vehicles, including Plaintiffs and the Class.
6 Defendants also knew that these Defective Vehicles would reach the Plaintiffs and
7 the Class without substantial change in their condition from the time the vehicles
8 departed the Defendants' assembly lines.
9

10 1128. Defendants designed the Defective Vehicles defectively, causing them
11 to fail to perform as safely as an ordinary consumer would expect when used in an
12 intended and reasonably foreseeable manner.
13

14 1129. Defendants had the capability to use a feasible, alternative, safer design,
15 and failed to correct the design defects.

16 1130. The risks inherent in the design of Defective Vehicles outweigh
17 significantly any benefits of such design.
18

19 1131. Plaintiffs and the Class could not have anticipated and did not know of
20 the aforementioned defects at any time prior to recent revelations regarding the
21 problems of the Defective Vehicles.

22 1132. As a direct and proximate result of Defendants' wrongful conduct,
23 Plaintiffs have suffered damages, including, but not limited to, diminution in value,
24 return of lease payments and penalties, and injunctive relief related to future lease
25 payments or penalties.
26
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1 1133. Plaintiffs and the Class have sustained and will continue to sustain
2 economic losses and other damages for which they are entitled to compensatory and
3 equitable damages and declaratory relief in an amount to be proven at trial.

4
5 **COUNT VII**

6 **STRICT PRODUCT LIABILITY (FAILURE TO WARN)**

7 **(Based on Illinois Law)**

8 1134. Plaintiffs reallege and incorporate by reference all paragraphs as though
9 fully set forth herein.

10 1135. Defendants are and have been at all times pertinent to this Complaint,
11 engaged in the business of designing, manufacturing, assembling, promoting,
12 advertising, distributing and selling Defective Vehicles in the United States,
13 including those owned or leased by the Plaintiffs and the Class.

14
15 1136. Defendants, at all times pertinent to this Complaint, knew and
16 anticipated that the Defective Vehicles and their component parts would be
17 purchased, leased and operated by consumers, including Plaintiffs and the Class.

18 1137. Defendants also knew that these Defective Vehicles would reach the
19 Plaintiffs and the Class without substantial change in their conditions from the time
20 that the vehicles departed the Defendants' assembly lines.

21
22 1138. Defendants knew or should have known of the substantial dangers
23 involved in the reasonably foreseeable use of the Defective Vehicles, defective
24 design, manufacturing and lack of sufficient warnings which caused them to have an
25 unreasonably dangerous propensity to sudden and unintended acceleration.
26
27
28

1 1139. Defendants failed to adequately warn Plaintiffs and the Class when they
2 became aware of the defect that caused Plaintiffs and the Class' vehicles to be prone
3 to sudden and unintended acceleration.

4 1140. Defendants also failed to timely recall the vehicles or take any action to
5 timely warn Plaintiffs or the Class of these problems and instead continue to subject
6 Plaintiffs and the Class to harm.

7 1141. Defendants knew, or should have known, that these defects were not
8 readily recognizable to an ordinary consumer and that consumers would lease,
9 purchase and use these products without inspection.

10 1142. Defendants should have reasonably foreseen that the sudden and
11 unintended defect in the Defective Vehicles would subject the Plaintiffs and the
12 Class to harm resulting from the defect.

13 1143. Plaintiffs and the Class have used the Defective Vehicles for their
14 intended purpose and in a reasonable and foreseeable manner.

15 1144. As a direct and proximate result of Defendants' wrongful conduct,
16 Plaintiffs and the Class have sustained and will continue to sustain economic losses
17 and other damages for which they are entitled to compensatory and equitable
18 damages and declaratory relief in an amount to be proven at trial.

19
20
21
22 **COUNT VIII**

23 **UNJUST ENRICHMENT**

24 **(Based On Illinois Law)**

25 1145. Plaintiffs reallege and incorporate by reference all paragraphs as though
26 fully set forth herein.
27
28

1 1146. Plaintiffs paid Toyota the value of vehicles that are non-defective, and
2 in exchange, Toyota provided Plaintiffs vehicles that are, in fact, defective.

3 1147. Further, Plaintiffs paid Toyota the value for vehicles that would not be
4 compromised by substantial, invasive repairs, and in return received vehicles that
5 require such repairs.
6

7 1148. Further, Plaintiffs paid Toyota for vehicles they could operate, and in
8 exchange, Toyota provided Plaintiffs vehicles that could not be normally operated
9 because their defects posed the possibility of life-threatening injuries or death.

10 1149. As such, Plaintiffs conferred a windfall upon Toyota, which knows of
11 the windfall and has retained such benefits, which would be unjust for Toyota to
12 retain.
13

14 1150. As a direct and proximate result of Toyota's unjust enrichment,
15 Plaintiffs have suffered and continue to suffer various damages, including, but not
16 limited to, restitution of all amounts by which Defendants were enriched through
17 their misconduct.
18

19 **COUNT IX**

20 **FRAUDULENT CONCEALMENT / FRAUD BY OMISSION**

21 **(Based On Illinois Law)**

22 1151. Plaintiffs reallege and incorporate by reference all paragraphs as though
23 fully set forth herein.

24 1152. Toyota intentionally concealed the above-described material safety
25 information, or acted with reckless disregard for the truth, and denied Plaintiffs and
26 the Class information that is highly relevant to their purchasing decision.
27
28

1 1153. Defendants further affirmatively misrepresented to Plaintiffs in
2 advertising and other forms of communication, including standard and uniform
3 material provided with each car that the vehicles they were selling were new, had no
4 significant defects and would perform and operate properly when driven in normal
5 usage.
6

7 1154. Defendants knew these representations were false when made.

8 1155. The vehicles purchased or leased by Plaintiffs were, in fact, defective,
9 unsafe, and unreliable, because the vehicles were subject to sudden, extreme
10 acceleration without adequate fail-safe mechanisms.
11

12 1156. Toyota had a duty to disclose that these vehicles were defective, unsafe
13 and unreliable in that the vehicles were subject to sudden, extreme acceleration
14 without fail-safe mechanisms because Plaintiffs relied on Toyota's material
15 representations that the vehicles they were purchasing were safe and free from
16 defects.
17

18 1157. The aforementioned concealment was material because if it had been
19 disclosed Plaintiffs would not have bought or leased the vehicles.

20 1158. The aforementioned representations were material because they were
21 facts that would typically be relied on by a person purchasing or leasing a new motor
22 vehicle. Toyota knew or recklessly disregarded that its representations were false
23 because it knew that people had died in its vehicles' unintended acceleration between
24 2002 and 2009. Toyota intentionally made the false statements in order to sell
25 vehicles.
26

27 1159. Plaintiffs relied on Toyota's reputation – along with Toyota's failure to
28 disclose the acceleration problems and Toyota's affirmative assurance that its

1 vehicles were safe and reliable and other similar false statements – in purchasing or
2 leasing Toyota's vehicles.

3 1160. As a result of their reliance, Plaintiffs have been injured in an amount to
4 be proven at trial, including, but not limited to, their lost benefit of the bargain and
5 overpayment at the time of purchase and/or the diminished value of their vehicles.
6

7 1161. Defendants' conduct was knowing, intentional, with malice,
8 demonstrated a complete lack of care, and was in reckless disregard for the rights of
9 Plaintiffs. Plaintiffs are therefore entitled to an award of punitive damages.

10 **COUNT X**

11 **BREACH OF LEASE / CONTRACT**

12 **(Based On Illinois Law)**

13
14 1162. Plaintiffs reallege and incorporate by reference all paragraphs as though
15 fully set forth herein.

16 1163. Plaintiffs and the Class entered into lease agreements with Toyota.
17 Plaintiffs and the Class entered into agreements to purchase Toyota vehicles which
18 also directly or indirectly benefited Defendants.
19

20 1164. The leases and purchase agreements provided that Plaintiffs and the
21 Class would make payments and in return would receive a new vehicle that would
22 operate properly.

23 1165. Defendants breached their agreements with Plaintiffs and the Class,
24 because the vehicles sold or leased to Plaintiffs and the Class were defective and not
25 of a quality that reasonably would be expected of a new automobile.
26

27 1166. Plaintiffs and the Class have fully performed their duties under the
28 purchase and lease agreements.

1 1167. Defendants are liable for all damages suffered by Plaintiffs and the
2 Class caused by such breaches of contract.

3 **INDIANA**
4 **COUNT I**
5 **VIOLATION OF THE INDIANA DECEPTIVE CONSUMER SALES ACT**
6 **(Ind. Code § 24-5-0.5-3)**

7
8 1168. Plaintiffs reallege and incorporate by reference all paragraphs as though
9 fully set forth herein.

10 1169. Indiana's Deceptive Consumer Sales Act prohibits a person from
11 engaging in a "deceptive trade practice," which includes representing: "(1) That
12 such subject of a consumer transaction has sponsorship, approval, performance,
13 characteristics, accessories, uses, or benefits that they do not have, or that a person
14 has a sponsorship, approval, status, affiliation, or connection it does not have;
15 (2) That such subject of a consumer transaction is of a particular standard, quality,
16 grade, style or model, if it is not and if the supplier knows or should reasonably
17 know that it is not; ... (7) That the supplier has a sponsorship, approval or affiliation
18 in such consumer transaction that the supplier does not have, and which the supplier
19 knows or should reasonably know that the supplier does not have; ... (b) Any
20 representations on or within a product or its packaging or in advertising or
21 promotional materials which would constitute a deceptive act shall be the deceptive
22 act both of the supplier who places such a representation thereon or therein, or who
23 authored such materials, and such suppliers who shall state orally or in writing that
24 such representation is true if such other supplier shall know or have reason to know
25 that such representation was false."
26
27
28

1 1170. Toyota is a person with the meaning of IND. CODE § 24-5-0.5-2(2).

2 1171. In the course of Toyota's business, it willfully failed to disclose and
3 actively concealed the dangerous risk of throttle control failure and the lack of
4 adequate fail-safe mechanisms in Defective Vehicles equipped with ETCS.
5 Accordingly, Toyota engaged in unlawful trade practices, including representing that
6 Defective Vehicles have characteristics, uses, benefits, and qualities which they do
7 not have; representing that Defective Vehicles are of a particular standard and
8 quality when they are not; advertising Defective Vehicles with the intent not to sell
9 them as advertised; and otherwise engaging in conduct likely to deceive.
10

11 1172. Toyota's actions as set forth above occurred in the conduct of trade or
12 commerce.
13

14 1173. Toyota's conduct proximately caused injuries to Plaintiffs and the Class.

15 1174. Plaintiffs and the Class were injured as a result of Toyota's conduct in
16 that Plaintiffs overpaid for their Defective Vehicles and did not receive the benefit of
17 their bargain, and their vehicles have suffered a diminution in value. These injuries
18 are the direct and natural consequence of Toyota's misrepresentations and omissions.
19

20 1175. Plaintiffs seek injunctive relief and, if awarded damages under Indiana
21 Deceptive Consumer Protection Act, treble damages pursuant to IND. CODE § 24-5-
22 0.5-4(a)(1).

23 1176. Plaintiffs also seek punitive damages based on the outrageousness and
24 recklessness of Toyota's conduct and its high net worth.
25
26
27
28

COUNT II

BREACH OF EXPRESS WARRANTY

(Ind. Code § 26-1-2-313)

1177. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1178. Toyota is and was at all relevant times a merchant with respect to motor vehicles.

1179. In the course of selling its vehicles, Toyota expressly warranted in writing that the Vehicles were covered by a Basic Warranty.

1180. Toyota breached the express warranty to repair and adjust to correct defects in materials and workmanship of any part supplied by Toyota. Toyota has not repaired or adjusted, and has been unable to repair or adjust, the Vehicles' materials and workmanship defects.

1181. In addition to this Basic Warranty, Toyota expressly warranted several attributes, characteristics and qualities.

1182. These warranties are only a sampling of the numerous warranties that Toyota made relating to safety, reliability and operation. Generally these express warranties promise heightened, superior, and state-of-the-art safety, reliability, performance standards, and promote the benefits of ETCS. These warranties were made, *inter alia*, in advertisements, in Toyota's "e brochures," and in uniform statements provided by Toyota to be made by salespeople. These affirmations and promises were part of the basis of the bargain between the parties.

1183. These additional warranties were also breached because the Defective Vehicles were not fully operational, safe, or reliable (and remained so even after the

1 problems were acknowledged and a recall “fix” was announced), nor did they
2 comply with the warranties expressly made to purchasers or lessees. Toyota did not
3 provide at the time of sale, and has not provided since then, vehicles conforming to
4 these express warranties.

5
6 1184. Furthermore, the limited warranty of repair and/or adjustments to
7 defective parts, fails in its essential purpose because the contractual remedy is
8 insufficient to make the Plaintiffs and the Class whole and because the Defendants
9 have failed and/or have refused to adequately provide the promised remedies within
10 a reasonable time.

11
12 1185. Accordingly, recovery by the Plaintiffs is not limited to the limited
13 warranty of repair or adjustments to parts defective in materials or workmanship, and
14 Plaintiffs seek all remedies as allowed by law.

15
16 1186. Also, as alleged in more detail herein, at the time that Defendants
17 warranted and sold the vehicles they knew that the vehicles did not conform to the
18 warranties and were inherently defective, and Defendants wrongfully and
19 fraudulently misrepresented and/or concealed material facts regarding their vehicles.
20 Plaintiffs and the Class were therefore induced to purchase the vehicles under false
21 and/or fraudulent pretenses.

22
23 1187. Moreover, many of the damages flowing from the Defective Vehicles
24 cannot be resolved through the limited remedy of “replacement or adjustments,” as
25 those incidental and consequential damages have already been suffered due to
26 Defendants’ fraudulent conduct as alleged herein, and due to their failure and/or
27 continued failure to provide such limited remedy within a reasonable time, and any
28

1 limitation on Plaintiffs' and the Class' remedies would be insufficient to make
2 Plaintiffs and the Class whole.

3 1188. Finally, due to the Defendants' breach of warranties as set forth herein,
4 Plaintiffs and the Class assert as an additional and/or alternative remedy, as set forth
5 in IND. CODE § 26-1-2-608, for a revocation of acceptance of the goods, and for a
6 return to Plaintiffs and to the Class of the purchase price of all vehicles currently
7 owned.
8

9 1189. Toyota was provided notice of these issues by numerous complaints
10 filed against it, including the instant complaint, and by numerous individual letters
11 and communications sent by Plaintiffs and the Class before or within a reasonable
12 amount of time after Toyota issued the recall and the allegations of vehicle defects
13 became public.
14

15 1190. As a direct and proximate result of Toyota's breach of express
16 warranties, Plaintiffs and the Class have been damaged in an amount to be
17 determined at trial.
18

19 **COUNT III**

20 **BREACH OF THE IMPLIED WARRANTY OF MERCHANTABILITY**

21 **(Ind. Code § 26-1-2-314)**

22 1191. Plaintiffs reallege and incorporate by reference all paragraphs as though
23 fully set forth herein.

24 1192. Toyota is and was at all relevant times a merchant with respect to motor
25 vehicles.
26

27 1193. A warranty that the Defective Vehicles were in merchantable condition
28 is implied by law in the instant transactions.

1 1194. These vehicles, when sold and at all times thereafter, were not in
2 merchantable condition and are not fit for the ordinary purpose for which cars are
3 used. Specifically, the Defective Vehicles are inherently defective in that there are
4 defects in the vehicle control systems that permit sudden unintended acceleration to
5 occur; the Defective Vehicles do not have an adequate fail-safe to protect against
6 such SUA events, nor do they have a brake-override; and the ETCS system was not
7 adequately tested.
8

9 1195. Toyota was provided notice of these issues by numerous complaints
10 filed against it, including the instant complaint, and by numerous individual letters
11 and communications sent by Plaintiffs and the Class before or within a reasonable
12 amount of time after Toyota issued the recall and the allegations of vehicle defects
13 became public.
14

15 1196. As a direct and proximate result of Toyota's breach of the warranties of
16 merchantability, Plaintiffs and the Class have been damaged in an amount to be
17 proven at trial.
18

19 **COUNT IV**
20 **REVOCATION OF ACCEPTANCE**
21 **(Ind. Code § 26-1-2-608)**

22 1197. Plaintiffs reallege and incorporate by reference all paragraphs as though
23 fully set forth herein.

24 1198. Plaintiffs identified above demanded revocation and the demands were
25 refused.
26

27 1199. Plaintiffs and the Class had no knowledge of such defects and
28 nonconformities, were unaware of these defects, and reasonably could not have

1 discovered them when they purchased or leased their automobiles from Toyota. On
2 the other hand, Toyota was aware of the defects and nonconformities at the time of
3 sale and thereafter.

4 1200. Acceptance was reasonably induced by the difficulty of discovery of the
5 defects and nonconformities before acceptance.

6 1201. There has been no change in the condition of Plaintiffs' vehicles not
7 caused by the defects and nonconformities.

8 1202. When Plaintiffs sought to revoke acceptance, Toyota refused to accept
9 return of the Defective Vehicles and to refund Plaintiffs' purchase price and monies
10 paid.
11

12 1203. Plaintiffs and the Class would suffer economic hardship if they returned
13 their vehicles but did not receive the return of all payments made by them. Because
14 Toyota is refusing to acknowledge any revocation of acceptance and return
15 immediately any payments made, Plaintiffs and the Class have not re-accepted their
16 Defective Vehicles by retaining them.
17

18 1204. These defects and nonconformities substantially impaired the value of
19 the Defective Vehicles to Plaintiffs and the Class. This impairment stems from two
20 basic sources. First, the Defective Vehicles fail in their essential purpose because
21 they present an unreasonably high risk of sudden unintended acceleration (a risk
22 acknowledged by Toyota's recall), rendering them unsafe in a very material way.
23 Second, the repair and adjust warranty has failed of its essential purpose because
24 Toyota cannot repair or adjust the Defective Vehicles.
25

26 1205. Plaintiffs and the Class provided notice of their intent to seek revocation
27 of acceptance by a class-action lawsuit seeking such relief. In addition, Plaintiffs
28

1 (and many Class members) have requested that Toyota accept return of their vehicles
2 and return all payments made. Plaintiffs on behalf of themselves and the Class
3 hereby demand revocation and tender their Defective Vehicles.

4 1206. Plaintiffs and the Class would suffer economic hardship if they returned
5 their vehicles but did not receive the return of all payments made by them. Because
6 Toyota is refusing to acknowledge any revocation of acceptance and return
7 immediately any payments made, Plaintiffs and the Class have not re-accepted their
8 Defective Vehicles by retaining them, as they must continue using them due to the
9 financial burden of securing alternative means of transport for an uncertain and
10 substantial period of time.

11 1207. Finally, due to the Defendants' breach of warranties as set forth herein,
12 Plaintiffs and the Class assert as an additional and/or alternative remedy, as set forth
13 in IND. CODE § 26-1-2-608, for a revocation of acceptance of the goods, and for a
14 return to Plaintiffs and to the Class of the purchase price of all vehicles currently
15 owned.

16 1208. Consequently, Plaintiffs and the Class are entitled to revoke their
17 acceptances, receive all payments made to Toyota, and to all incidental and
18 consequential damages, including the costs associated with purchasing safer vehicles,
19 and all other damages allowable under law, all in amounts to be proven at trial.

20
21
22
23 **COUNT V**

24 **BREACH OF CONTRACT/COMMON LAW WARRANTY**

25 **(Based On Indiana Law)**

26 1209. Plaintiffs reallege and incorporate by reference all paragraphs as though
27 fully set forth herein.
28

1211. Toyota breached this warranty or contract obligation by failing to repair the Defective Vehicles evidencing a sudden unintended acceleration problem, including those that were recalled, or to replace them.

COUNT VI

1213. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1215. As a result of their wrongful and fraudulent acts and omissions, as set forth above, pertaining to the design defect of their vehicles and the concealment of the defect, Toyota charged a higher price for their vehicles than the vehicles' true value and Toyota obtained monies which rightfully belong to Plaintiffs.

1 1216. Toyota appreciated, accepted and retained the benefits conferred by
2 Plaintiffs and the Class, who without knowledge of the safety defects paid a higher
3 price for vehicles which actually had lower values. It would be inequitable and
4 unjust for Toyota to retain these wrongfully obtained profits. There is no
5 justification for Plaintiffs' and the Class' impoverishment and Toyota's related
6 enrichment.
7

8 1217. Plaintiffs, therefore, are entitled to restitution and seek an order
9 establishing Toyota as constructive trustees of the profits unjustly obtained, plus
10 interest.
11

12 **COUNT VII**
13 **FRAUDULENT CONCEALMENT**
14 **(Based On Indiana Law)**

15 1218. Plaintiffs reallege and incorporate by reference all paragraphs as though
16 fully set forth herein.
17

18 1219. Toyota intentionally concealed the above-described material safety
19 information, or acted with reckless disregard for the truth, and denied Plaintiffs and
20 the Class information that is highly relevant to their purchasing decision.
21

22 1220. Defendants further affirmatively misrepresented to Plaintiffs in
23 advertising and other forms of communication, including standard and uniform
24 material provided with each car that the vehicles they were selling were new, had no
25 significant defects and would perform and operate properly when driven in normal
26 usage.
27
28

1 1221. Defendants knew these representations were false when made.

2 1222. The vehicles purchased or leased by Plaintiffs were, in fact, defective,
3 unsafe, and unreliable, because the vehicles were subject to sudden, extreme
4 acceleration without adequate fail-safe mechanisms.
5

6 1223. Toyota had a duty to disclose that these vehicles were defective, unsafe
7 and unreliable in that the vehicles were subject to sudden, extreme acceleration
8 without adequate fail-safe mechanisms because Plaintiffs relied on Toyota's material
9 representations that the vehicles they were purchasing were safe and free from
10 defects.
11
12

13 1224. The aforementioned concealment was material because if it had been
14 disclosed Plaintiffs would not have bought or leased the vehicles.
15

16 1225. The aforementioned representations were material because they were
17 facts that would typically be relied on by a person purchasing or leasing a new motor
18 vehicle. Toyota knew or recklessly disregarded that its representations were false
19 because it knew that people had died in its vehicles' unintended acceleration between
20 2002 and 2009. Toyota intentionally made the false statements in order to sell
21 vehicles.
22
23

24 1226. Plaintiffs relied on Toyota's reputation – along with Toyota's failure to
25 disclose the acceleration problems and Toyota's affirmative assurance that its
26 vehicles were safe and reliable and other similar false statements – in purchasing or
27 leasing Toyota's vehicles.
28

1 1227. As a result of their reliance, Plaintiffs have been injured in an amount to
2 be proven at trial, including, but not limited to, their lost benefit of the bargain and
3 overpayment at the time of purchase and/or the diminished value of their vehicles.
4

5 1228. Defendants' conduct was knowing, intentional, with malice,
6 demonstrated a complete lack of care, and was in reckless disregard for the rights of
7 Plaintiffs. Plaintiffs and the Class are therefore entitled to an award of punitive
8 damages.
9

10 **IOWA**
11 **COUNT I**
12 **VIOLATIONS OF THE PRIVATE RIGHT OF ACTION**
13 **FOR CONSUMER FRAUDS ACT**

14 **(Iowa Code § 714H.1, *et seq.*)**

15 1229. Plaintiffs reallege and incorporate by reference all paragraphs as though
16 fully set forth herein.
17

18 1230. Defendants are "persons" under IOWA CODE § 714H.2(7).

19 1231. Plaintiffs are "consumers," as defined by IOWA CODE § 714H.2(3), who
20 purchased or leased one or more Defective Vehicles.

21 1232. Defendants both participated in unfair or deceptive acts or practices that
22 violated Iowa's Private Right of Action for Consumer Fraud Act ("Iowa CFA"),
23 IOWA CODE § 714H.1, *et seq.*, as described above and below. Defendants each are
24 directly liable for these violations of law. TMC also is liable for TMS's violations of
25 the Iowa CFA because TMS acts as TMC's general agent in the United States for
26 purposes of sales and marketing.
27
28

1 1233. By failing to disclose and actively concealing the dangerous risk of
2 throttle control failure and the lack of adequate fail-safe mechanisms in Defective
3 Vehicles equipped with ETCS, Defendants engaged in deceptive business practices
4 prohibited by the Iowa CFA, IOWA CODE § 714H.1, *et seq.*, including
5
6 (1) representing that Defective Vehicles have characteristics, uses, benefits, and
7 qualities which they do not have, (2) representing that Defective Vehicles are of a
8 particular standard, quality, and grade when they are not, (3) advertising Defective
9 Vehicles with the intent not to sell them as advertised, and (4) engaging in acts or
10 practices which are otherwise unfair, misleading, false or deceptive to the consumer.

11 1234. As alleged above, Defendants made numerous material statements about
12 the safety and reliability of Defective Vehicles that were either false or misleading.
13 Each of these statements contributed to the deceptive context of TMC's and TMS's
14 unlawful advertising and representations as a whole.

15 1235. Defendants knew that the ETCS in Defective Vehicles was defectively
16 designed or manufactured, would fail without warning, and was not suitable for its
17 intended use of regulating throttle position and vehicle speed based on driver
18 commands. Defendants nevertheless failed to warn Plaintiffs about these inherent
19 dangers despite having a duty to do so.

20 1236. Defendants each owed Plaintiffs a duty to disclose the defective nature
21 of Defective Vehicles, including the dangerous risk of throttle control failure, the
22 ETCS defects, and the lack of adequate fail-safe mechanisms, because they:

23 a. Possessed exclusive knowledge of the defects rendering
24 Defective Vehicles inherently more dangerous and unreliable than similar vehicles;
25
26
27
28

1 b. Intentionally concealed the hazardous situation with Defective
2 Vehicles through their deceptive marketing campaign and recall program that they
3 designed to hide the life-threatening problems from Plaintiffs; and/or

4 c. Made incomplete representations about the safety and reliability
5 of Defective Vehicles generally, and ETCS in particular, while purposefully
6 withholding material facts from Plaintiffs that contradicted these representations.
7

8 1237. Defective Vehicles equipped with ETCS pose an unreasonable risk of
9 death or serious bodily injury to Plaintiffs, passengers, other motorists, pedestrians,
10 and the public at large, because they are susceptible to incidents of sudden
11 unintended acceleration.
12

13 1238. Whether or not a vehicle (a) accelerates only when commanded to do so
14 and (b) decelerates and stops when commanded to do so are facts that a reasonable
15 consumer would consider important in selecting a vehicle to purchase or lease.
16 When Plaintiffs bought a Toyota vehicle for personal, family, or household purposes,
17 they reasonably expected the vehicle would (a) not accelerate unless commanded to
18 do so by application of the accelerator pedal or other driver-controlled means;
19 (b) decelerate to a stop when the brake pedal was applied, and was equipped with
20 any necessary fail-safe mechanisms including a brake-override.
21

22 1239. TMC's and TMS's unfair or deceptive acts or practices were likely to
23 and did in fact deceive reasonable consumers, including Plaintiffs, about the true
24 safety and reliability of Defective Vehicles.
25

26 1240. As a result of its violations of the Iowa CFA detailed above, Defendants
27 caused actual damage to Plaintiffs and, if not stopped, will continue to harm
28 Plaintiffs. Plaintiffs currently own or lease, or within the class period have owned or

1 leased, Defective Vehicles that are defective and inherently unsafe. ETCS defects
2 and the resulting unintended acceleration incidents have caused the value of
3 Defective Vehicles to plummet.

4 1241. Plaintiffs risk irreparable injury as a result of TMC's and TMS's acts
5 and omissions in violation of the Iowa CFA, and these violations present a
6 continuing risk to Plaintiffs as well as to the general public.

7 1242. Plaintiffs and the Class sustained damaged as a result of the Defendants'
8 unlawful acts and are, therefore, entitled to damages and other relief as provided
9 under Chapter 714H of the Iowa CFA. Because Defendants' conduct was committed
10 willfully, Plaintiffs seek treble damages as provided in IOWA CODE § 714H.5(4).
11

12 1243. Plaintiffs also seek court costs and attorneys fees as a result of
13 Defendant's violation of Chapter 714H as provided in IOWA CODE § 714H.5(2).
14

15 **COUNT II**

16 **BREACH OF EXPRESS WARRANTY**

17 **(Iowa Code § 554.2313)**

18 1244. Plaintiffs reallege and incorporate by reference all paragraphs as though
19 fully set forth herein.
20

21 1245. Toyota is and was at all relevant times a merchant with respect to motor
22 vehicles under IOWA CODE § 544.2104.

23 1246. In the course of selling its vehicles, Toyota expressly warranted in
24 writing that the Vehicles were covered by a Basic Warranty.

25 1247. Toyota breached the express warranty to repair and adjust to correct
26 defects in materials and workmanship of any part supplied by Toyota. Toyota has
27
28

1 not repaired or adjusted, and has been unable to repair or adjust, the Vehicles'
2 materials and workmanship defects.

3 1248. These warranties are only a sampling of the numerous warranties that
4 Toyota made relating to safety, reliability and operation, which are more fully
5 outlined in Section IV.A., *supra*. Generally these express warranties promise
6 heightened, superior, and state-of-the-art safety, reliability, performance standards,
7 and promote the benefits of ETCS. These warranties were made, *inter alia*, in
8 advertisements, in Toyota's "e-brochures," and in uniform statements provided by
9 Toyota to be made by salespeople. These affirmations and promises were part of the
10 basis of the bargain between the parties.
11

12 1249. These additional warranties were also breached because the Defective
13 Vehicles were not fully operational, safe, or reliable (and remained so even after the
14 problems were acknowledged and a recall "fix" was announced), nor did they
15 comply with the warranties expressly made to purchasers or lessees. Toyota did not
16 provide at the time of sale, and has not provided since then, vehicles conforming to
17 these express warranties.
18

19 1250. Furthermore, the limited warranty of repair and/or adjustments to
20 defective parts, fails in its essential purpose because the contractual remedy is
21 insufficient to make the Plaintiffs and the Class whole and because the Defendants
22 have failed and/or have refused to adequately provide the promised remedies within
23 a reasonable time.
24

25 1251. Accordingly, recovery by the Plaintiffs is not limited to the limited
26 warranty of repair or adjustments to parts defective in materials or workmanship, and
27 Plaintiffs seek all remedies as allowed by law.
28

1 1252. Also, as alleged in more detail herein, at the time that Defendants
2 warranted and sold the vehicles they knew that the vehicles did not conform to the
3 warranties and were inherently defective, and Defendants wrongfully and
4 fraudulently misrepresented and/or concealed material facts regarding their vehicles.
5 Plaintiffs and the Class were therefore induced to purchase the vehicles under false
6 and/or fraudulent pretenses. The enforcement under these circumstances of any
7 limitations whatsoever precluding the recovery of incidental and/or consequential
8 damages is unenforceable .
9

10 1253. Moreover, many of the damages flowing from the Defective Vehicles
11 cannot be resolved through the limited remedy of “replacement or adjustments,” as
12 those incidental and consequential damages have already been suffered due to
13 Defendants’ fraudulent conduct as alleged herein, and due to their failure and/or
14 continued failure to provide such limited remedy within a reasonable time, and any
15 limitation on Plaintiffs’ and the Class’ remedies would be insufficient to make
16 Plaintiffs and the Class whole.
17

18 1254. Finally, due to the Defendants’ breach of warranties as set forth herein,
19 Plaintiffs and the Class assert as an additional and/or alternative remedy, as set forth
20 in IOWA CODE § 554.2711, for a revocation of acceptance of the goods, and for a
21 return to Plaintiffs and to the Class of the purchase price of all vehicles currently
22 owned and for such other incidental and consequential damages as allowed under
23 IOWA CODE §§ 544.2711 and 544.2608.
24

25 1255. Toyota was provided notice of these issues by numerous complaints
26 filed against it, including the instant complaint, and by numerous individual letters
27 and communications sent by Plaintiffs and the Class before or within a reasonable
28

1 amount of time after Toyota issued the recall and the allegations of vehicle defects
2 became public.

3 1256. As a direct and proximate result of Toyota's breach of express
4 warranties, Plaintiffs and the Class have been damaged in an amount to be
5 determined at trial.
6

7 **COUNT III**

8 **BREACH OF THE IMPLIED WARRANTY OF MERCHANTABILITY**

9 **(Iowa Code § 544.2314)**

10 1257. Plaintiffs reallege and incorporate by reference all paragraphs as though
11 fully set forth herein.
12

13 1258. Toyota is and was at all relevant times a merchant with respect to motor
14 vehicles under IOWA COM. CODE § 544.2104.

15 1259. A warranty that the Defective Vehicles were in merchantable condition
16 was implied by law in the instant transaction, pursuant to IOWA CODE § 544.2314.

17 1260. These vehicles, when sold and at all times thereafter, were not in
18 merchantable condition and are not fit for the ordinary purpose for which cars are
19 used. Specifically, the Defective Vehicles are inherently defective in that there are
20 defects in the vehicle control systems that permit sudden unintended acceleration to
21 occur; the Defective Vehicles do not have an adequate fail-safe to protect against
22 such SUA events, nor do they have a brake-override; and the ETCS system was not
23 adequately tested.
24

25 1261. Toyota was provided notice of these issues by numerous complaints
26 filed against it, including the instant complaint, and by numerous individual letters
27 and communications sent by Plaintiffs and the Class before or within a reasonable
28

1 amount of time after Toyota issued the recall and the allegations of vehicle defects
2 became public.

3 1262. As a direct and proximate result of Toyota's breach of the warranties of
4 merchantability, Plaintiffs and the Class have been damaged in an amount to be
5 proven at trial.
6

7 **COUNT IV**
8 **REVOCATION OF ACCEPTANCE**
9 **(Iowa Code § 544.2608)**

10 1263. Plaintiffs reallege and incorporate by reference all paragraphs as though
11 fully set forth herein.
12

13 1264. Plaintiffs identified above demanded revocation and the demands were
14 refused.

15 1265. Plaintiffs and the Class had no knowledge of such defects and
16 nonconformities, were unaware of these defects, and reasonably could not have
17 discovered them when they purchased or leased their automobiles from Toyota. On
18 the other hand, Toyota was aware of the defects and nonconformities at the time of
19 sale and thereafter.
20

21 1266. Acceptance was reasonably induced by the difficulty of discovery of the
22 defects and nonconformities before acceptance.

23 1267. There has been no substantial change in the condition of Plaintiffs'
24 vehicles not caused by the defects and nonconformities.
25

26 1268. When Plaintiffs sought to revoke acceptance, Toyota refused to accept
27 return of the Defective Vehicles and to refund Plaintiffs' purchase price and monies
28 paid.

1 1269. Plaintiffs and the Class would suffer economic hardship if they returned
2 their vehicles but did not receive the return of all payments made by them. Because
3 Toyota is refusing to acknowledge any revocation of acceptance and return
4 immediately any payments made, Plaintiffs and the Class have not re-accepted their
5 Defective Vehicles by retaining them.
6

7 1270. These defects and nonconformities substantially impaired the value of
8 the Defective Vehicles to Plaintiffs and the Class. This impairment stems from two
9 basic sources. First, the Defective Vehicles fail in their essential purpose because
10 they present an unreasonably high risk of sudden unintended acceleration (a risk
11 acknowledged by Toyota's recall), rendering them unsafe in a very material way.
12 Second, the repair and adjust warranty has failed of its essential purpose because
13 Toyota cannot repair or adjust the Defective Vehicles.
14

15 1271. Plaintiffs and the Class provided notice of their intent to seek revocation
16 of acceptance by a class-action lawsuit seeking such relief. In addition, Plaintiffs
17 (and many Class members) have requested that Toyota accept return of their vehicles
18 and return all payments made. Plaintiffs on behalf of themselves and the Class
19 hereby demand revocation and tender their Defective Vehicles.
20

21 1272. Plaintiffs and the Class would suffer economic hardship if they returned
22 their vehicles but did not receive the return of all payments made by them. Because
23 Toyota is refusing to acknowledge any revocation of acceptance and return
24 immediately any payments made, Plaintiffs and the Class have not re-accepted their
25 Defective Vehicles by retaining them, as they must continue using them due to the
26 financial burden of securing alternative means of transport for an uncertain and
27 substantial period of time.
28

1 1273. Finally, due to the Defendants' breach of warranties as set forth herein,
2 Plaintiffs and the Class assert as an additional and/or alternative remedy, as set forth
3 in IOWA CODE § 544.2711, for a revocation of acceptance of the goods, and for a
4 return to Plaintiffs and to the Class of the purchase price of all vehicles currently
5 owned and for such other incidental and consequential damages as allowed under
6 IOWA CODE § 544.2711.
7

8 1274. Consequently, Plaintiffs and the Class are entitled to revoke their
9 acceptances, receive all payments made to Toyota, and to all incidental and
10 consequential damages, including the costs associated with purchasing safer vehicles,
11 and all other damages allowable under law, all in amounts to be proven at trial.
12

13 **COUNT V**

14 **BREACH OF CONTRACT/COMMON LAW WARRANTY**

15 **(Based On Iowa Law)**

16 1275. Plaintiffs reallege and incorporate by reference all paragraphs as though
17 fully set forth herein.

18 1276. To the extent Toyota's repair or adjust commitment is deemed not to be
19 a warranty under the Uniform Commercial Code as adopted in Iowa, Plaintiffs plead
20 in the alternative under common law warranty and contract law. Toyota limited the
21 remedies available to Plaintiffs and the Class to just repairs and adjustments needed
22 to correct defects in materials or workmanship of any part supplied by Toyota,
23 and/or warranted the quality or nature of those services to Plaintiffs.
24

25 1277. Toyota breached this warranty or contract obligation by failing to repair
26 the Defective Vehicles evidencing a sudden unintended acceleration problem,
27 including those that were recalled, or to replace them.
28

COUNT VI

(Based On Iowa Law)

1280. Defendants had a duty to disclose the above-described safety issues because they consistently marketed their vehicles as safe and proclaimed that safety is one of Toyota's highest corporate priorities. Once Defendants made representations to the public about safety, Defendants were under a duty to disclose these omitted facts, because where one does speak one must speak the whole truth and not conceal any facts which materially qualify those facts stated. One who volunteers information must be truthful, and the telling of a half-truth calculated to deceive is fraud.

1281. In addition, Defendants had a duty to disclose these omitted material facts because they were known and/or accessible only to Defendants who have superior knowledge and access to the facts, and Defendants knew they were not known to or reasonably discoverable by Plaintiffs and the Class. These omitted facts were material because they directly impact the safety of the Defective Vehicles. Whether or not a vehicle accelerates only at the driver's command, and whether a vehicle will stop or not upon application of the brake by the driver, are material

1 safety concerns. Defendants possessed exclusive knowledge of the defects rendering
2 Defective Vehicles inherently more dangerous and unreliable than similar vehicles.

3 1282. Defendants actively concealed and/or suppressed these material facts, in
4 whole or in part, with the intent to induce Plaintiffs and the Class to purchase
5 Defective Vehicles at a higher price for the vehicles, which did not match the
6 vehicles' true value.
7

8 1283. Defendants still have not made full and adequate disclosure and
9 continue to defraud Plaintiffs and the Class.

10 1284. Plaintiffs and the Class were unaware of these omitted material facts
11 and would not have acted as they did if they had known of the concealed and/or
12 suppressed facts. Plaintiffs' and the Class' actions were justified. Defendants were
13 in exclusive control of the material facts and such facts were not known to the public
14 or the Class.
15

16 1285. As a result of the concealment and/or suppression of the facts, Plaintiffs
17 and the Class sustained damage.

18 1286. Defendants' acts were done maliciously, oppressively, deliberately, with
19 intent to defraud, and in reckless disregard of Plaintiffs' and the Class' rights and
20 well-being to enrich Defendants. Defendants' conduct warrants an assessment of
21 punitive damages in an amount sufficient to deter such conduct in the future, which
22 amount is to be determined according to proof.
23
24
25
26
27
28

COUNT VII
UNJUST ENRICHMENT
(Based On Iowa Law)

1287. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1288. As a result of their wrongful and fraudulent acts and omissions, as set forth above, pertaining to the design defect of their vehicles and the concealment of the defect, Defendants charged a higher price for their vehicles than the vehicles' true value and Defendants obtained monies which rightfully belong to Plaintiffs.

1289. Defendants enjoyed the benefit of increased financial gains, to the detriment of Plaintiffs and the Class, who paid a higher price for vehicles which actually had lower values. It would be inequitable and unjust for Defendants to retain these wrongfully obtained profits.

1290. Plaintiffs, therefore, seek an order establishing Defendants as constructive trustees of the profits unjustly obtained, plus interest.

KANSAS

COUNT I

VIOLATIONS OF THE KANSAS CONSUMER PROTECTION ACT

(Kan. Stat. Ann. § 50-623, *et seq.*)

1291. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1292. Defendants are "suppliers" under § 50-624(l) of the Kansas Consumer Protection Act ("Kansas CPA")

1 1293. Plaintiffs are “consumers,” as defined by § 50-624(b) of the Kansas
2 CPA, who purchased or leased one or more Defective Vehicles.

3 1294. Defendants both participated in deceptive acts or practices that violated
4 the Kansas CPA, as described above and below. Defendants each are directly liable
5 for these violations of law. TMC also is liable for TMS’s violations of the CLRA
6 because TMS acts as TMC’s general agent in the United States for purposes of sales
7 and marketing.
8

9 1295. Defendants engaged in deceptive acts or practices prohibited by the
10 Kansas CPA, including (1) representing that Defective Vehicles have characteristics,
11 uses, and benefits that they do not have and (2) representing that Defective Vehicles
12 are of a particular standard, quality, and grade when they are of another which differs
13 materially from the representation. Specifically, as alleged above, Defendants made
14 numerous material statements about the safety and reliability of Defective Vehicles
15 that were either false or misleading. Each of these statements contributed to the
16 deceptive context of TMC’s and TMS’s unlawful advertising and representations as
17 a whole.
18

19 1296. Defendants knew or had reason to know that its representations were
20 false. Defendants knew that the ETCS in Defective Vehicles was defectively
21 designed or manufactured, would fail without warning, and was not suitable for its
22 intended use of regulating throttle position and vehicle speed based on driver
23 commands. Defendants nevertheless failed to warn Plaintiffs about these inherent
24 dangers despite having a duty to do so.
25

26 1297. Defendants engaged in further deceptive acts or practices prohibited by
27 the Kansas CPA by willfully failing to disclose or willfully concealing, suppressing,
28

1 or omitting material facts about Defective Vehicles. Specifically, Defendants failed
2 to disclose and actively concealed the dangerous risk of throttle control failure and
3 the lack of adequate fail-safe mechanisms in Defective Vehicles equipped with
4 ETCS. Defendants knew that the ETCS in Defective Vehicles was defectively
5 designed or manufactured, would fail without warning, and was not suitable for its
6 intended use of regulating throttle position and vehicle speed based on driver
7 commands. Defendants nevertheless failed to warn Plaintiffs and the Class about
8 these inherent dangers despite having a duty to do so.
9

10 1298. Whether or not a vehicle (a) accelerates only when commanded to do so
11 and (b) decelerates and stops when commanded to do so are facts that a reasonable
12 consumer would consider important in selecting a vehicle to purchase or lease.
13 When Plaintiffs bought a Toyota Vehicle for personal, family, or household
14 purposes, they reasonably expected the vehicle would (a) not accelerate unless
15 commanded to do so by application of the accelerator pedal or other driver-
16 controlled means; (b) decelerate to a stop when the brake pedal was applied, and was
17 equipped with any necessary fail-safe mechanisms including a brake-override.
18
19

20 1299. Defendants' acts or practices alleged above are unconscionable because,
21 among other reasons, Defendants knew or had reason to know they had had made
22 misleading statements of opinion on which Plaintiffs were likely to rely to their
23 detriment.

24 1300. Defendants' deceptive and unconscionable acts or practices were likely
25 to and did in fact deceive reasonable consumers, including Plaintiffs, about the true
26 safety and reliability of Defective Vehicles as a result of Defendants' violations of
27 the Kansas CPA.
28

1 1301. Plaintiffs and the Class suffered loss as a result of Defendants'
2 violations of the Kansas CPA detailed above. Plaintiffs currently own or lease, or
3 within the class period have owned or leased, Defective Vehicles that are defective
4 and inherently unsafe. ETCS defects and the resulting unintended acceleration
5 incidents have caused the value of Defective Vehicles to plummet.
6

7 1302. Pursuant to § 50-634(b) of the Kansas CPA, Plaintiffs seek monetary
8 relief against Defendants measured as the greater of (a) actual damages in an amount
9 to be determined at trial and (b) civil penalties provided for by § 50-636 of the
10 Kansas CPA.
11

12 1303. Plaintiffs also seek punitive damages against Defendants because they
13 acted willfully, wantonly, fraudulently, or maliciously. Defendants intentionally and
14 willfully misrepresented the safety and reliability of Defective Vehicles, deceived
15 Plaintiffs on life-or-death matters, and concealed material facts that only it knew, all
16 to avoid the expense and public relations nightmare of correcting a deadly flaw in the
17 Defective Vehicles it repeatedly promised Plaintiffs were safe. Defendants'
18 unlawful conduct constitutes malice, oppression, and fraud warranting punitive
19 damages.
20

21 1304. Plaintiffs risk irreparable injury as a result of Defendants' deceptive and
22 unconscionable acts or practices in violation of the Kansas CPA, and these violations
23 present a continuing risk to Plaintiffs as well as to the general public.
24

25 1305. The recalls and repairs instituted by Toyota have not been adequate.
26 Defective Vehicles still are defective and the "confidence" booster offer of an
27 override is not an effective remedy and is not offered to all Defective Vehicles,
28 including the 2002-2007 Camry.

1 1306. Plaintiffs and the Class further seek an order enjoining Defendants'
2 deceptive and unconscionable acts or practices, restitution, punitive damages, costs
3 of Court, attorney's fees, and any other just and proper relief available under the
4 Kansas CPA.

5
6 **COUNT II**
7 **BREACH OF EXPRESS WARRANTY**

8 **(Kan. Stat. Ann. § 84-2-313)**

9 1307. Plaintiffs reallege and incorporate by reference all paragraphs as though
10 fully set forth herein.

11 1308. Toyota is and was at all relevant times a merchant with respect to motor
12 vehicles under KAN. STAT. ANN. § 84-2-104.

13
14 1309. In the course of selling its vehicles, Toyota expressly warranted in
15 writing that the Vehicles were covered by a Basic Warranty.

16 1310. Toyota breached the express warranty to repair and adjust to correct
17 defects in materials and workmanship of any part supplied by Toyota. Toyota has
18 not repaired or adjusted, and has been unable to repair or adjust, the Vehicles'
19 materials and workmanship defects.

20
21 1311. In addition to this Basic Warranty, Toyota expressly warranted several
22 attributes, characteristics and qualities as set forth above.

23 1312. These warranties are only a sampling of the numerous warranties that
24 Toyota made relating to safety, reliability and operation, which are more fully
25 outlined in Section IV.A., *supra*. Generally these express warranties promise
26 heightened, superior, and state-of-the-art safety, reliability, performance standards,
27 and promote the benefits of ETCS. These warranties were made, *inter alia*, in
28

1 advertisements, in Toyota's "e brochures," and in uniform statements provided by
2 Toyota to be made by salespeople. These affirmations and promises were part of the
3 basis of the bargain between the parties.

4 1313. These additional warranties were also breached because the Defective
5 Vehicles were not fully operational, safe, or reliable (and remained so even after the
6 problems were acknowledged and a recall "fix" was announced), nor did they
7 comply with the warranties expressly made to purchasers or lessees. Toyota did not
8 provide at the time of sale, and has not provided since then, vehicles conforming to
9 these express warranties.
10

11 1314. Furthermore, the limited warranty of repair and/or adjustments to
12 defective parts, fails in its essential purpose because the contractual remedy is
13 insufficient to make the Plaintiffs and the Class whole and because the Defendants
14 have failed and/or have refused to adequately provide the promised remedies within
15 a reasonable time.
16

17 1315. Accordingly, recovery by the Plaintiffs and the Class is not limited to
18 the limited warranty of repair or adjustments to parts defective in materials or
19 workmanship, and Plaintiffs and the Class seek all remedies as allowed by law.
20

21 1316. Also, as alleged in more detail herein, at the time that Defendants
22 warranted and sold the vehicles they knew that the vehicles did not conform to the
23 warranties and were inherently defective, and Defendants wrongfully and
24 fraudulently misrepresented and/or concealed material facts regarding their vehicles.
25 Plaintiffs and the Class were therefore induced to purchase the vehicles under false
26 and/or fraudulent pretenses. The enforcement under these circumstances of any
27
28

1 limitations whatsoever precluding the recovery of incidental and/or consequential
2 damages is unenforceable.

3 1317. Moreover, many of the damages flowing from the Defective Vehicles
4 cannot be resolved through the limited remedy of “replacement or adjustments,” as
5 those incidental and consequential damages have already been suffered due to
6 Defendants’ fraudulent conduct as alleged herein, and due to their failure and/or
7 continued failure to provide such limited remedy within a reasonable time, and any
8 limitation on Plaintiffs’ and the Class’ remedies would be insufficient to make
9 Plaintiffs and the Class whole.
10

11 1318. Finally, due to the Defendants’ breach of warranties as set forth herein,
12 Plaintiffs and the Class assert as an additional and/or alternative remedy, as set forth
13 in KAN. STAT. ANN. § 84-2-711, for a revocation of acceptance of the goods, and for
14 a return to Plaintiffs and to the Class of the purchase price of all vehicles currently
15 owned and for such other incidental and consequential damages as allowed under
16 KAN. STAT. ANN. §§ 84-2-711 and 84-2-608.
17

18 1319. Toyota was provided notice of these issues by numerous complaints
19 filed against it, including the instant complaint, and by numerous individual letters
20 and communications sent by Plaintiffs and the Class before or within a reasonable
21 amount of time after Toyota issued the recall and the allegations of vehicle defects
22 became public.
23

24 1320. As a direct and proximate result of Toyota’s breach of express
25 warranties, Plaintiffs and the Class have been damaged in an amount to be
26 determined at trial.
27
28

COUNT III

BREACH OF THE IMPLIED WARRANTY OF MERCHANTABILITY

(Kan. Stat. Ann. § 84-2-314)

1321. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1322. Plaintiffs are “natural persons” within the meaning of KAN. STAT. ANN. § 84-2-318.

1323. Toyota is and was at all relevant times a merchant with respect to motor vehicles under KAN. STAT. ANN. § 84-2-104.

1324. A warranty that the Defective Vehicles were in merchantable condition was implied by law in the instant transaction, pursuant to KAN. STAT. ANN. § 84-2-314.

1325. These vehicles, when sold and at all times thereafter, were not in merchantable condition and are not fit for the ordinary purpose for which cars are used. Specifically, the Defective Vehicles are inherently defective in that there are defects in the vehicle control systems that permit sudden unintended acceleration to occur; the Defective Vehicles do not have an adequate fail-safe to protect against such SUA events, nor do they have a brake-override; and the ETCS system was not adequately tested.

1326. Toyota was provided notice of these issues by numerous complaints filed against it, including the instant complaint, and by numerous individual letters and communications sent by Plaintiffs and the Class before or within a reasonable amount of time after Toyota issued the recall and the allegations of vehicle defects became public.

1 1327. Privity is not required because the Defective Vehicles are inherently
2 dangerous.

3 1328. As a direct and proximate result of Toyota's breach of the warranties of
4 merchantability, Plaintiffs and the Class have been damaged in an amount to be
5 proven at trial.
6

7 **COUNT IV**
8 **REVOCATION OF ACCEPTANCE**
9 **(Kan. Stat. Ann. § 84-2-608)**

10 1329. Plaintiffs reallege and incorporate by reference all paragraphs as though
11 fully set forth herein.
12

13 1330. Plaintiffs identified above demanded revocation and the demands were
14 refused.

15 1331. Plaintiffs and the Class had no knowledge of such defects and
16 nonconformities, were unaware of these defects, and reasonably could not have
17 discovered them when they purchased or leased their automobiles from Toyota. On
18 the other hand, Toyota was aware of the defects and nonconformities at the time of
19 sale and thereafter.
20

21 1332. Acceptance was reasonably induced by the difficulty of discovery of the
22 defects and nonconformities before acceptance.

23 1333. There has been no change in the condition of Plaintiffs' vehicles not
24 caused by the defects and nonconformities.

25 1334. When Plaintiffs sought to revoke acceptance, Toyota refused to accept
26 return of the Defective Vehicles and to refund Plaintiffs' and the Class' purchase
27 price and monies paid.
28

1 1335. Plaintiffs and the Class would suffer economic hardship if they returned
2 their vehicles but did not receive the return of all payments made by them. Because
3 Toyota is refusing to acknowledge any revocation of acceptance and return
4 immediately any payments made, Plaintiffs and the Class have not re-accepted their
5 Defective Vehicles by retaining them.
6

7 1336. These defects and nonconformities substantially impaired the value of
8 the Defective Vehicles to Plaintiffs and the Class. This impairment stems from two
9 basic sources. First, the Defective Vehicles fail in their essential purpose because
10 they present an unreasonably high risk of sudden unintended acceleration (a risk
11 acknowledged by Toyota's recall), rendering them unsafe in a very material way.
12 Second, the repair and adjust warranty has failed of its essential purpose because
13 Toyota cannot repair or adjust the Defective Vehicles.
14

15 1337. Plaintiffs and the Class provided notice of their intent to seek revocation
16 of acceptance by a class-action lawsuit seeking such relief. In addition, Plaintiffs
17 (and many Class members) have requested that Toyota accept return of their vehicles
18 and return all payments made. Plaintiffs on behalf of themselves and the Class
19 hereby demand revocation and tender their Defective Vehicles.
20

21 1338. Plaintiffs and the Class would suffer economic hardship if they returned
22 their vehicles but did not receive the return of all payments made by them. Because
23 Toyota is refusing to acknowledge any revocation of acceptance and return
24 immediately any payments made, Plaintiffs and the Class have not re-accepted their
25 Defective Vehicles by retaining them, as they must continue using them due to the
26 financial burden of securing alternative means of transport for an uncertain and
27 substantial period of time.
28

1 1339. Finally, due to the Defendants' breach of warranties as set forth herein,
2 Plaintiffs and the Class assert as an additional and/or alternative remedy, as set forth
3 in KAN. STAT. ANN. § 84-2-711, for a revocation of acceptance of the goods, and for
4 a return to Plaintiffs and to the Class of the purchase price of all vehicles currently
5 owned and for such other incidental and consequential damages as allowed under
6 KAN. STAT. ANN. § 84-2-711.
7

8 1340. To the extent such allegations are necessary, Plaintiffs allege that
9 authorized Toyota dealers from whom Plaintiffs purchased defective vehicles acted
10 as the agents of TMS and/or TMC. Plaintiffs further allege, to the extent such
11 allegations are necessary, that Toyota's warranties failed of their essential purpose.
12 Plaintiffs further allege, to the extent such allegations are necessary, that Toyota's
13 warranty and the purchase contracts for Defective Vehicles were received by
14 Plaintiffs as a single agreement.
15

16 1341. Consequently, Plaintiffs and the Class are entitled to revoke their
17 acceptances, receive all payments made to Toyota, and to all incidental and
18 consequential damages, including the costs associated with purchasing safer vehicles,
19 and all other damages allowable under law, all in amounts to be proven at trial.
20

21 **COUNT V**

22 **BREACH OF CONTRACT/COMMON LAW WARRANTY**

23 **(Based On Kansas Law)**

24 1342. Plaintiffs reallege and incorporate by reference all paragraphs as though
25 fully set forth herein.
26

27 1343. To the extent Toyota's repair or adjust commitment is deemed not to be
28 a warranty under the Uniform Commercial Code as adopted in Kansas, Plaintiffs and

1 the Class plead in the alternative under common law warranty and contract law.
2 Toyota limited the remedies available to Plaintiffs and the Class to just repairs and
3 adjustments needed to correct defects in materials or workmanship of any part
4 supplied by Toyota, and/or warranted the quality or nature of those services to
5 Plaintiffs.
6

7 1344. Toyota breached this warranty or contract obligation by failing to repair
8 the Defective Vehicles evidencing a sudden unintended acceleration problem,
9 including those that were recalled, or to replace them.

10 1345. To the extent such allegations are necessary, Plaintiffs and the Class
11 allege that they relied on Toyota's common law warranties.
12

13 1346. As a direct and proximate result of Defendants' breach of contract or
14 common law warranty, Plaintiffs and the Class have been damaged in an amount to
15 be proven at trial, which shall include, but is not limited to, all compensatory
16 damages, incidental and consequential damages, and other damages allowed by law.
17

18 **COUNT VI**

19 **FRAUD BY CONCEALMENT**

20 **(Based On Kansas Law)**

21 1347. Plaintiffs reallege and incorporate by reference all paragraphs as though
22 fully set forth herein.

23 1348. As set forth above, Defendants concealed and/or suppressed material
24 facts concerning the safety of their vehicles.

25 1349. Defendants had a duty to disclose these safety issues because they
26 consistently marketed their vehicles as safe and proclaimed that safety is one of
27 Toyota's highest corporate priorities. Once Defendants made representations to the
28

1 public about safety, Defendants were under a duty to disclose these omitted facts,
2 because where one does speak one must speak the whole truth and not conceal any
3 facts which materially qualify those facts stated. One who volunteers information
4 must be truthful, and the telling of a half-truth calculated to deceive is fraud.
5

6 1350. In addition, Defendants had a duty to disclose these omitted material
7 facts because they were known and/or accessible only to Defendants who have
8 superior knowledge and access to the facts, and Defendants knew they were not
9 known to or reasonably discoverable by Plaintiffs and the Class. These omitted facts
10 were material because they directly impact the safety of the Defective Vehicles.
11 Whether or not a vehicle accelerates only at the driver's command, and whether a
12 vehicle will stop or not upon application of the brake by the driver, are material
13 safety concerns. Defendants possessed exclusive knowledge of the defects rendering
14 Defective Vehicles inherently more dangerous and unreliable than similar vehicles.
15

16 1351. Defendants actively concealed and/or suppressed these material facts, in
17 whole or in part, with the intent to induce Plaintiffs and the Class to purchase
18 Defective Vehicles at a higher price for the vehicles, which did not match the
19 vehicles' true value.
20

21 1352. Defendants still have not made full and adequate disclosure and
22 continue to defraud Plaintiffs and the Class.

23 1353. Plaintiffs and the Class were unaware of these omitted material facts
24 and would not have acted as they did if they had known of the concealed and/or
25 suppressed facts. Plaintiffs' and the Class' actions were justified. Defendants were
26 in exclusive control of the material facts and such facts were not known to the public
27 or the Class.
28

1 1354. As a result of the concealment and/or suppression of the facts, Plaintiffs
2 and the Class sustained damage. Plaintiffs and the Class reserve their right to elect
3 either to (a) rescind their purchase or lease of Defective Vehicles and obtain
4 restitution (b) affirm their purchase or lease of Defective Vehicles and recover
5 damages.
6

7 1355. Defendants' acts were done willfully, wantonly, fraudulently, or
8 maliciously, oppressively, deliberately, with intent to defraud, and in reckless
9 disregard of Plaintiffs' and the Class' rights and well-being to enrich Defendants.
10 Defendants' conduct warrants an assessment of punitive damages in an amount
11 sufficient to deter such conduct in the future, which amount is to be determined
12 according to proof.
13

14 **COUNT VII**
15 **UNJUST ENRICHMENT**
16 **(Based On Kansas Law)**

17 1356. Plaintiffs reallege and incorporate by reference all paragraphs as though
18 fully set forth herein.
19

20 1357. As a result of their wrongful and fraudulent acts and omissions, as set
21 forth above, pertaining to the design defect of their vehicles and the concealment of
22 the defect, Defendants charged a higher price for their vehicles than the vehicles'
23 true value and Defendants obtained monies which rightfully belong to Plaintiffs.
24

25 1358. Defendants enjoyed the benefit of increased financial gains, to the
26 detriment of Plaintiffs and the Class, who paid a higher price for vehicles which
27 actually had lower values. It would be inequitable and unjust for Defendants to
28 retain these wrongfully obtained profits.

1359. Plaintiffs, therefore, seek an order establishing Defendants as constructive trustees of the profits unjustly obtained, plus interest.

KENTUCKY

COUNT I

VIOLATION OF THE KENTUCKY CONSUMER PROTECTION ACT

(Ky. Rev. Stat. § 367.110, *et seq.*)

1360. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1361. Defendants misrepresented the safety of the Defective Vehicles after learning of their defects with the intent that Plaintiffs relied on such representations in their decision regarding the purchase, lease and/or use of the Defective Vehicles.

1362. Plaintiffs did, in fact, rely on such representations in their decision regarding the purchase, lease and/or use of the Defective Vehicles.

1363. Through those misleading and deceptive statements and false promises, Defendants violated the Kentucky Consumer Protection Act (“KCPA”).

1364. The KCPA applies to Defendants' transactions with Plaintiffs because Defendants' deceptive scheme was carried out in Kentucky and affected Plaintiffs.

1365. Defendants also failed to advise NHSTA and the public about what they knew about the sudden and unintended acceleration defects in the Defective Vehicles.

1366. Plaintiffs relied on Defendants' silence as to known defects in connection with their decision regarding the purchase, lease and/or use of the Defective Vehicles.

COUNT II

BREACH OF EXPRESS WARRANTY

(Ky. Rev. Stat. § 355.2-313)

1368. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1369. Defendants expressly warranted – through statements and advertisements described above – that the vehicles were of high quality, and at a minimum, would actually work properly and safely.

1370. Defendants breached this warranty by knowingly selling to Plaintiffs vehicles with dangerous defects, and which were not of high quality.

1371. Plaintiffs have been damaged as a direct and proximate result of the breaches by Defendants in that the Defective Vehicles purchased by Plaintiffs were and are worth far less than what the Plaintiffs paid to purchase, which was reasonably foreseeable to Defendants.

COUNT III

BREACH OF IMPLIED WARRANTIES OF MERCHANTABILITY

(Ky. Rev. Stat. § 335.2-314)

1372. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1 1373. Defendants impliedly warranted that their vehicles were of good and
2 merchantable quality and fit, and safe for their ordinary intended use – transporting
3 the driver and passengers in reasonable safety during normal operation, and without
4 unduly endangering them or members of the public.

5
6 1374. As described above, there were dangerous defects in the vehicles
7 manufactured, distributed, and/or sold by Defendants, which Plaintiffs purchased,
8 including, but not limited to, defects that caused the vehicles to suddenly and
9 unintentionally accelerate, and the lack of safety slow and stop the vehicle when
10 such acceleration occurred.

11
12 1375. These dangerous defects existed at the time the vehicles left
13 Defendants' manufacturing facilities and at the time they were sold to Plaintiffs.
14 Furthermore, because of these dangerous defects, Plaintiffs did not receive the
15 benefit of their bargain and the vehicles have suffered a diminution in value.

16 1376. These dangerous defects were the direct and proximate cause of
17 damages to the Plaintiffs and the Class.

18
19 **COUNT IV**
20 **FRAUDULENT CONCEALMENT**
21 **(Based On Kentucky Law)**

22 1377. Plaintiffs reallege and incorporate by reference all paragraphs as though
23 fully set forth herein.

24 1378. Toyota intentionally concealed the above-described material safety
25 information, or acted with reckless disregard for the truth, and denied Plaintiff and
26 the Class information that is highly relevant to their purchasing decision.
27
28

1 1379. Defendants further affirmatively misrepresented to Plaintiffs in
2 advertising and other forms of communication, including standard and uniform
3 material provided with each car that the vehicles they were selling were new, had no
4 significant defects and would perform and operate properly when driven in normal
5 usage.
6

7 1380. Defendants knew these representations were false when made.

8 1381. The vehicles purchased or leased by Plaintiffs were, in fact, defective,
9 unsafe, and unreliable, because the vehicles were subject to sudden, extreme
10 acceleration without adequate fail-safe mechanisms.
11

12 1382. Toyota had a duty to disclose that these vehicles were defective, unsafe
13 and unreliable in that the vehicles were subject to sudden, extreme acceleration
14 without adequate fail-safe mechanisms because Plaintiffs relied on Toyota's material
15 representations that the vehicles they were purchasing were safe and free from defects.
16

17 1383. The aforementioned concealment was material because if it had been
18 disclosed Plaintiffs would not have bought or leased the vehicles.
19

20 1384. The aforementioned representations were material because they were
21 facts that would typically be relied on by a person purchasing or leasing a new motor
22 vehicle. Toyota knew or recklessly disregarded that its representations were false
23 because it knew that people had died in its vehicles' unintended acceleration between
24 2002 and 2009. Toyota intentionally made the false statements in order to sell
25 vehicles.
26

27 1385. Plaintiffs relied on Toyota's reputation – along with Toyota's failure to
28 disclose the acceleration problems and Toyota's affirmative assurance that its

1 vehicles were safe and reliable and other similar false statements – in purchasing or
2 leasing Toyota's vehicles.

3 1386. As a result of their reliance, Plaintiffs have been injured in an amount to
4 be proven at trial, including, but not limited to, their lost benefit of the bargain and
5 overpayment at the time of purchase and/or the diminished value of their vehicles.
6

7 1387. Defendants' conduct was knowing, intentional, with malice,
8 demonstrated a complete lack of care, and was in reckless disregard for the rights of
9 Plaintiffs. Plaintiffs are therefore entitled to an award of punitive damages.

10 **COUNT V**
11 **UNJUST ENRICHMENT**
12 **(Based On Kentucky Law)**
13

14 1388. Plaintiffs reallege and incorporate by reference all paragraphs as though
15 fully set forth herein.

16 1389. Plaintiffs paid Toyota the value of vehicles that are non-defective, and
17 in exchange, Toyota provided Plaintiffs vehicles that are, in fact, defective.

18 1390. Further, Plaintiffs paid Toyota the value for vehicles that would not be
19 compromised by substantial, invasive repairs, and in return received vehicles that
20 require such repairs.
21

22 1391. Further, Plaintiffs paid Toyota for vehicles they could operate, and in
23 exchange, Toyota provided Plaintiffs vehicles that could not be normally operated
24 because their defects posed the possibility of life-threatening injuries or death.

25 1392. As such, Plaintiffs conferred a windfall upon Toyota, which knows of
26 the windfall and has retained such benefits, which would be unjust for Toyota to
27 retain such benefits
28

1 1393. As a direct and proximate result of Toyota's unjust enrichment,
2 Plaintiffs have suffered and continue to suffer various damages, including, but not
3 limited to, restitution of all amounts by which Defendants were enriched through
4 their misconduct.

5
6 **LOUISIANA**

7 **COUNT I**

8 **LOUISIANA PRODUCTS LIABILITY ACT**

9 **(La. Rev. Stat. § 9:2800.51, *et seq.*)**

10 1394. Plaintiffs reallege and incorporate by reference all paragraphs as though
11 fully set forth herein.

12 1395. Plaintiffs allege that Toyota has defectively designed, manufactured,
13 sold or otherwise placed in the stream of commerce Defective Vehicles as set forth
14 above.

15
16 1396. The product in question is unreasonably dangerous for the following
17 reasons:

18 a. It is unreasonably dangerous in construction or composition as
19 provided in LA. REV. STAT. § 9:2800.55;

20 b. It is unreasonably dangerous in design as provided in LA. REV.
21 STAT. § 9:2800.56;

22 c. It is unreasonably dangerous because an adequate warning about
23 the product was not provided as required by LA. REV. STAT. § 9:2800.57; and

24 d. It is unreasonably dangerous because it does not conform to an
25 express warranty of the manufacturer about the product that render it unreasonably
26
27
28

1 dangerous under LA. REV. STAT. § 9:2800.55, *et seq.*, that existed at the time the
2 product left the control of the manufacturer.

3 1397. Toyota knew and expected for the Defective Vehicles to eventually be
4 sold to and operated by purchasers and/or eventual owners of the Defective Vehicles,
5 including Plaintiffs; consequently, Plaintiffs were an expected user of the product
6 which Toyota manufactured.
7

8 1398. The Defective Vehicles reached Plaintiffs without substantial changes in
9 their condition from time of completion of manufacture by Toyota.

10 1399. The defects in the Defective Vehicles could not have been contemplated
11 by any reasonable person expected to operate the Defective Vehicles, and, therefore,
12 presented an unreasonably dangerous situation for expected users of the Defective
13 Vehicles even though the Defective Vehicles were operated by expected users in a
14 reasonable manner.
15

16 1400. As a direct and proximate cause of Toyota's design, manufacture,
17 assembly, marketing, and sales of the Defective Vehicles, Plaintiffs have sustained
18 and will continue to sustain the loss of use of his/her vehicle, economic losses and
19 consequential damages, and are therefore entitled to compensatory relief according
20 to proof, and entitled to a declaratory judgment that Toyota is liable to Plaintiffs for
21 breach of its duty to design, manufacture, assemble, market, and sell a safe product,
22 fit for its reasonably intended use. Plaintiffs allege that the unintended acceleration
23 events are the type of occurrences which would not happen in the absence of a
24 defective product. Plaintiffs allege the application of *res ipsa loquitur* under
25 Louisiana Products Liability Law.
26
27
28

COUNT II

REDHIBITION

(LA. Civ. Code Art. 2520, *et seq.* and 2545)

1401. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1402. Plaintiffs allege that Toyota defectively designed, manufactured, sold or otherwise placed in the stream of commerce vehicles that are defective.

1403. Plaintiffs allege that the unintended acceleration events are the type of occurrences which would not happen in the absence of a defective product. Plaintiffs allege the application of res ipsa loquitur under Louisiana Products Liability Law.

1404. Plaintiffs allege that Defendants have known about safety hazards that result in unexpected accelerations of its vehicles for a number of years and has failed to adequately address those safety concerns.

1405. Defendants, as manufacturer of the Defective Vehicles, are responsible for damages caused by the failure of its product to conform to well-defined standards. In particular, the vehicles contain vices or defects which rendered them useless or their use so inconvenient and unsafe that a reasonable buyer would not have purchased them. Defendants manufactured, sold and promoted the vehicles and placed the vehicles into the stream of commerce. Under Louisiana Law, the seller and manufacturer warrants the buyer against redhibitory defects or vices in the things sold. LA. CODE CIV. P. Art. 2520. The vehicles as sold and promoted by Defendants possessed redhibitory defects because they were not manufactured and marketed in accordance with industry standards and/or were unreasonably dangerous as described

1 above, which rendered the vehicles useless or their use so inconvenient and unsafe
2 that it must be presumed that a buyer would not have bought the vehicles had he/she
3 known of the defect. Pursuant to LA. CODE CIV. P. Art. 2520, Plaintiffs are entitled
4 to obtain a rescission of the sale of the subject product.
5

6 1406. The vehicles alternatively possess redhibitory defects because the
7 vehicles were not manufactured and marketed in accordance with industry standards
8 and/or were unreasonably dangerous as described above, which diminished the value
9 of the vehicles so that it must be presumed that a reasonable buyer would still have
10 bought the vehicles, but for a lesser price, had the redhibitory defects been disclosed.
11 In this instance, Plaintiffs are entitled to a reduction of the purchase price.
12

13 1407. As the manufacturer of the vehicle, under Louisiana Law, defendants
14 are deemed to know that the vehicle contained redhibitory defects pursuant to LA.
15 CODE CIV. P. Art. 2545. Toyota is liable as a bad faith seller for selling a defective
16 product with knowledge of defects and thus is liable to Plaintiffs for the price of the
17 subject product, with interest from the purchase date, as well as reasonable expenses
18 occasioned by the sale of the subject product, and attorney's fees.
19

20 1408. Due to the defects and redhibitory vices in the Toyotas sold to Plaintiffs,
21 they have suffered damages under Louisiana Law.

22 **COUNT III**

23 **BREACH OF IMPLIED WARRANTY OF FITNESS**
24 **FOR ORDINARY USE**

25 **(La. Civ. Code Art. 2524)**

26 1409. Plaintiffs reallege and incorporate by reference all paragraphs as though
27 fully set forth herein.
28

1 1410. At all relevant times, Toyota marketed, sold and distributed the
2 automobile for use by Plaintiffs, knew of the use for which the Defective Vehicles
3 were intended, and impliedly warranted them to be fit for ordinary use.

4 1411. The Defective Vehicles, when sold, were defective, unmerchantable,
5 and unfit for ordinary use.

6 1412. The Defective Vehicles contain vices or defects which render them
7 either absolutely useless or render their use inconvenient, imperfect, and unsafe such
8 that Plaintiffs would not have purchased the Defective Vehicles had they known of
9 the vices or defects.

10 1413. The damages in question arose from the reasonably anticipated use of
11 the product in question.

12 1414. Toyota breached the implied warranties of merchantability and fitness
13 for ordinary use when the Defective Vehicles were sold to Plaintiffs because they
14 have a tendency to accelerate suddenly and dangerously out of the driver's control
15 and lack a fail-safe mechanism to override unintended acceleration.

16 1415. As a direct and proximate cause of Toyota's breach of the implied
17 warranties of merchantability and fitness for ordinary use, Plaintiffs and the Class
18 have suffered injuries and damages.

19
20
21
22 **COUNT IV**

23 **NEGLIGENCE**

24 **(La. Civ. Code Art. 2315)**

25 1416. Plaintiffs reallege and incorporate by reference all paragraphs as though
26 fully set forth herein.
27
28

1 1417. Toyota had a duty to Plaintiffs to provide a safe product in design and
2 manufacture, to notify NHTSA, and to warn NHTSA of the defective nature of the
3 Defective Vehicles.

4 1418. Toyota breached its duty of reasonable care to Plaintiffs by designing
5 the Defective Vehicles in such a manner that they are prone to accelerate suddenly
6 and dangerously out of the driver's control and lack a fail-safe mechanism to
7 override unintended acceleration.

8 1419. Toyota breached its duty of reasonable care to Plaintiffs by
9 manufacturing and/or assembling the Defective Vehicles in such a manner that they
10 are prone accelerate suddenly and dangerously out of the driver's control and lack a
11 fail-safe mechanism to override unintended acceleration.

12 1420. Toyota breached its duty of reasonable care to Plaintiffs by failing to
13 recall the Defective Vehicles at the earliest possible date.

14 1421. Toyota breached its duty of reasonable care to Plaintiffs by failing to
15 exercise due care under the circumstances.

16 1422. As a direct and proximate result of Toyota's negligence as set forth in
17 the preceding paragraphs, Plaintiffs have sustained and will continue to sustain the
18 loss of use of their vehicles, economic losses, consequential damages and other
19 damages and are entitled to compensatory damages, and equitable and declaratory
20 relief according to proof.

21 1423. Toyota's egregious misconduct alleged above warrants the imposition
22 of punitive damages against Toyota to prevent such future behavior.

1 MAINE

2 COUNT I

3 VIOLATION OF MAINE UNFAIR TRADE PRACTICES ACT

4 (Me. Rev. Stat. Ann. tit. 5 § 205-A, *et seq.*)

5 1424. Plaintiffs reallege and incorporate by reference all paragraphs as though
6 fully set forth herein.

7
8 1425. The Maine Unfair Trade Practices Act (“UTPA”) makes unlawful
9 “[u]nfair methods of competition and unfair or deceptive acts or practices in the
10 conduct of any trade or commerce. . . .” per ME. REV. STAT. ANN. TIT. 5 § 207.

11 1426. The advertising and sale of motor vehicles by Toyota constitutes “trade
12 or commerce” within the meaning of UTPA per ME. REV. STAT. ANN. TIT. 5
13 § 206(3).

14
15 1427. In the course of Toyota’s business, it willfully failed to disclose and
16 actively concealed the dangerous risk of throttle control failure and the lack of
17 adequate fail-safe mechanisms in Defective Vehicles equipped with ETCS as
18 described above. This was a deceptive act in that Toyota represented that Defective
19 Vehicles have characteristics, uses, benefits, and qualities which they do not have;
20 represented that Defective Vehicles are of a particular standard and quality when
21 they are not; and advertised Defective Vehicles with the intent not to sell them as
22 advertised. Toyota knew or should have known that its conduct violated the UTPA.

23
24 1428. Toyota engaged in a deceptive trade practice when it failed to disclose
25 material information concerning the Toyota vehicles which was known to Toyota at
26 the time of the sale. Toyota deliberately withheld the information about the vehicles’
27
28

1 propensity for rapid, uncontrolled acceleration in order to ensure that consumers
2 would purchase its vehicles and to induce the consumer to enter into a transaction.

3 1429. The information withheld was material in that it was information that
4 was important to consumers and likely to affect their choice of, or conduct regarding,
5 the purchase of their cars. Toyota's withholding of this information was likely to
6 mislead consumers acting reasonably under the circumstances. The propensity of the
7 Toyotas for rapid, uncontrolled acceleration and their lack of a fail-safe mechanism
8 were material to Plaintiffs and the Class. Had Plaintiffs and the Class known that
9 their Toyotas had these serious safety defects, they would not have purchased their
10 Toyotas.
11

12 1430. Toyota's conduct has caused or is to cause a substantial injury that is
13 not reasonably avoided by consumers, and the harm is not outweighed by a
14 countervailing benefit to consumers or competition
15

16 1431. As a result of Toyota's deceptive and unfair practices, Plaintiffs and the
17 Class have suffered loss of money or property. Plaintiffs and the Class overpaid for
18 their vehicles and did not receive the benefit of their bargain. The value of their
19 Toyotas have diminished now that the safety issues have come to light, and Plaintiffs
20 and the Class own vehicles that are not safe.
21

22 1432. Plaintiffs are entitled to actual damages, restitution and such other
23 equitable relief, including an injunction, as the Court determines to be necessary and
24 proper.
25

26 1433. Pursuant to ME. REV. STAT. ANN. TIT. 5 § 213(3), Plaintiffs will mail a
27 copy of the complaint to Maine's Attorney General.
28

COUNT II

BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY

(Me. Rev. Stat. Ann. tit. 11 § 2-314)

1434. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1435. Toyota is and was at all relevant times a merchant with respect to motor vehicles.

1436. A warranty that the Defective Vehicles were in merchantable condition is implied by law in the instant transactions.

1437. These vehicles, when sold and at all times thereafter, were not in merchantable condition and are not fit for the ordinary purpose for which cars are used. Specifically, the Defective Vehicles are inherently defective in that there are defects in the vehicle control systems that permit sudden unintended acceleration to occur; the Defective Vehicles do not have an adequate fail-safe to protect against such SUA events, nor do they have a brake-override; and the ETCS system was not adequately tested.

1438. Toyota was provided notice of these issues by numerous complaints filed against it, including the instant complaint, and by numerous individual letters and communications sent by Plaintiffs and the Class before or within a reasonable amount of time after Toyota issued the recall and the allegations of vehicle defects became public.

1439. As a direct and proximate result of Toyota's breach of the warranties of merchantability, Plaintiffs and the Class have been damaged in an amount to be proven at trial.

COUNT III

REVOCATION OF ACCEPTANCE

(Me. Rev. Stat. Ann. tit. 11 § 2-608)

1440. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1441. Plaintiffs identified above demanded revocation and the demands were refused.

1442. Plaintiffs and the Class had no knowledge of such defects and nonconformities, were unaware of these defects, and reasonably could not have discovered them when they purchased or leased their automobiles from Toyota. On the other hand, Toyota was aware of the defects and nonconformities at the time of sale and thereafter.

1443. Acceptance was reasonably induced by the difficulty of discovery of the defects and nonconformities before acceptance.

1444. There has been no change in the condition of Plaintiffs' vehicles not caused by the defects and nonconformities.

1445. When Plaintiffs sought to revoke acceptance, Toyota refused to accept return of the Defective Vehicles and to refund Plaintiffs' purchase price and monies paid.

1446. Plaintiffs and the Class would suffer economic hardship if they returned their vehicles but did not receive the return of all payments made by them. Because Toyota is refusing to acknowledge any revocation of acceptance and return immediately any payments made, Plaintiffs and the Class have not re-accepted their Defective Vehicles by retaining them.

1 1447. These defects and nonconformities substantially impaired the value of
2 the Defective Vehicles to Plaintiffs and the Class. This impairment stems from two
3 basic sources. First, the Defective Vehicles fail in their essential purpose because
4 they present an unreasonably high risk of sudden unintended acceleration (a risk
5 acknowledged by Toyota's recall), rendering them unsafe in a very material way.
6 Second, the repair and adjust warranty has failed of its essential purpose because
7 Toyota cannot repair or adjust the Defective Vehicles.
8

9 1448. Plaintiffs and the Class provided notice of their intent to seek revocation
10 of acceptance by a class-action lawsuit seeking such relief. In addition, Plaintiffs
11 (and many Class members) have requested that Toyota accept return of their vehicles
12 and return all payments made. Plaintiffs on behalf of themselves and the Class
13 hereby demand revocation and tender their Defective Vehicles.
14

15 1449. Plaintiffs and the Class would suffer economic hardship if they returned
16 their vehicles but did not receive the return of all payments made by them. Because
17 Toyota is refusing to acknowledge any revocation of acceptance and return
18 immediately any payments made, Plaintiffs and the Class have not re-accepted their
19 Defective Vehicles by retaining them, as they must continue using them due to the
20 financial burden of securing alternative means of transport for an uncertain and
21 substantial period of time.
22

23 1450. Consequently, Plaintiffs and the Class are entitled to revoke their
24 acceptances, receive all payments made to Toyota, and to all incidental and
25 consequential damages, including the costs associated with purchasing safer
26 vehicles, and all other damages allowable under law, all in amounts to be proven at
27 trial.
28

COUNT IV

BREACH OF CONTRACT

(Based On Maine Law)

1451. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1452. To the extent Toyota's repair or adjust commitment is deemed not to be a warranty under Maine's Commercial Code, Plaintiffs plead in the alternative under common law contract law. Toyota limited the remedies available to Plaintiffs and the Class to just repairs and adjustments needed to correct defects in materials or workmanship of any part supplied by Toyota, and/or warranted the quality or nature of those services to Plaintiffs.

1453. Toyota breached this contractual obligation by failing to repair the Defective Vehicles evidencing a sudden unintended acceleration problem, including those that were recalled, or to replace them.

1454. As a direct and proximate result of Defendants' breach of contract warranty, Plaintiffs and the Class have been damaged in an amount to be proven at trial, which shall include, but is not limited to, all compensatory damages, incidental and consequential damages, and other damages allowed by law.

COUNT V

UNJUST ENRICHMENT

(Based On Maine Law)

1455. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1 1456. Toyota had knowledge of the safety defects in its vehicles, which it
2 failed to disclose to Plaintiffs and the Class.

3 1457. As a result of their wrongful and fraudulent acts and omissions, as set
4 forth above, pertaining to the design defect of their vehicles and the concealment of
5 the defect, Toyota charged a higher price for their vehicles than the vehicles' true
6 value and Toyota obtained monies which rightfully belong to Plaintiffs.
7

8 1458. Toyota appreciated, accepted and retained the non-gratuitous benefits
9 conferred by Plaintiffs and the Class, who without knowledge of the safety defects
10 paid a higher price for vehicles which actually had lower values. It would be
11 inequitable and unjust for Toyota to retain these wrongfully obtained profits.
12

13 1459. Plaintiffs, therefore, are entitled to restitution and seek an order
14 establishing Toyota as constructive trustees of the profits unjustly obtained, plus
15 interest.

16 **MARYLAND**

17 **COUNT I**

18 **VIOLATIONS OF THE MARYLAND CONSUMER PROTECTION ACT**

19 **(Md. Code Com. Law § 13-101, *et seq.*)**

20
21 1460. Plaintiffs reallege and incorporate by reference all paragraphs as though
22 fully set forth herein.

23 1461. Plaintiffs are persons within the meaning of the Maryland Consumer
24 Protection Act (the "Act") for all purposes therein.

25 1462. Toyota is a person within the meaning of the Act for all purposes
26 therein.
27
28

1 1463. The false, deceptive and misleading statements and representations
2 made by Toyota alleged above and below are Unfair and Deceptive Trade Practices
3 within the meaning of the Act.

4 1464. Toyota participated in unfair or deceptive acts or practices that violated
5 the Act, as described above and below, and those unfair and deceptive trade practices
6 occurred or were committed in the course, vocation or occupation of Defendants'
7 businesses. Toyota engaged in the unfair and deceptive trade practices and each are
8 directly liable for these violations of law.
9

10 1465. The Unfair and Deceptive Trade Practices as alleged above and below
11 significantly impact the public as actual or potential customers of Toyota.
12

13 1466. By failing to disclose and actively concealing the dangerous risk of
14 throttle control failure and the lack of adequate fail-safe mechanisms in Defective
15 Vehicles equipped with ETCS, Toyota engaged in deceptive business practices
16 prohibited by the Act, including, but not limited to, (1) representing that Defective
17 Vehicles have characteristics, uses, benefits, and qualities which they do not have,
18 (2) representing that Defective Vehicles are of a particular standard, quality, and
19 grade when they are not, (3) advertising Defective Vehicles with the intent not to sell
20 them as advertised; (4) representing that a transaction involving Defective Vehicles
21 confers or involves rights, remedies, and obligations which it does not, and
22 (5) representing that the subject of a transaction involving Defective Vehicles has
23 been supplied in accordance with a previous representation when it has not.
24

25 1467. As alleged above, Toyota made numerous material statements about the
26 safety and reliability of Defective Vehicles that were either false or misleading. Each
27
28

1 of these statements contributed to the deceptive context of Toyota's unlawful
2 advertising and representations as a whole.

3 1468. Toyota's unfair or deceptive acts or practices were likely to and did in
4 fact deceive reasonable consumers, including Plaintiffs, about the true safety and
5 reliability of Defective Vehicles.
6

7 1469. As a direct and proximate result of their unfair and deceptive business
8 practices, and violations of the Act detailed above, Toyota caused actual damages,
9 injuries, and losses to Plaintiffs and, if not stopped, will continue to harm Plaintiffs.
10 Plaintiffs currently own or lease, or within the class period have owned or leased,
11 Defective Vehicles that are defective and inherently unsafe. ETCH defects and the
12 resulting unintended acceleration incidents have caused the value of Defective
13 Vehicles to plummet.
14

15 1470. Plaintiffs are entitled to all damages permitted by M.R.S § 13-101,
16 *et seq.*, including actual damages sustained, civil penalties, attorneys' fees, and costs
17 of this action. Also, the State of Maryland is entitled to statutory penalties from
18 defendants for each violation of the Act.
19

20 **COUNT II**

21 **BREACH OF EXPRESS WARRANTY**

22 **(Md. Code Com. Law § 2-313)**

23 1471. Plaintiffs reallege and incorporate by reference all paragraphs as though
24 fully set forth herein.

25 1472. Toyota is and was at all relevant times a merchant as defined by the
26 Uniform Commercial Code.
27
28

1 1473. In the course of selling its vehicles, Toyota expressly warranted in
2 writing that the Vehicles were covered by a Basic Warranty.

3 1474. Toyota breached the express warranty to repair and adjust to correct
4 defects in materials and workmanship of any part supplied by Toyota. Toyota has
5 not repaired or adjusted, and has been unable to repair or adjust, the Vehicles'
6 materials and workmanship defects.

7
8 1475. In addition to this Basic Warranty, Toyota expressly warranted several
9 attributes, characteristics and qualities, as set forth above.

10 1476. These warranties are only a sampling of the numerous warranties that
11 Toyota made relating to safety, reliability and operation, which are more fully
12 outlined in Section IV.A., *supra*. Generally these express warranties promise
13 heightened, superior, and state-of-the-art safety, reliability, performance standards,
14 and promote the benefits of ETCS. These warranties were made, *inter alia*, in
15 advertisements, in Toyota's "e brochures," and in uniform statements provided by
16 Toyota to be made by salespeople. These affirmations and promises were part of the
17 basis of the bargain between the parties.
18

19
20 1477. These additional warranties were also breached because the Defective
21 Vehicles were not fully operational, safe, or reliable (and remained so even after the
22 problems were acknowledged and a recall "fix" was announced), nor did they
23 comply with the warranties expressly made to purchasers or lessees. Toyota did not
24 provide at the time of sale, and has not provided since then, vehicles conforming to
25 these express warranties.

26
27 1478. Furthermore, the limited warranty of repair and/or adjustments to
28 defective parts, fails in its essential purpose because the contractual remedy is

1 insufficient to make the Plaintiffs and the Class whole and because the Defendants
2 have failed and/or have refused to adequately provide the promised remedies within
3 a reasonable time.

4 1479. Accordingly, recovery by the Plaintiffs is not limited to the limited
5 warranty of repair or adjustments to parts defective in materials or workmanship, and
6 Plaintiffs seek all remedies as allowed by law.

7 1480. Also, as alleged in more detail herein, at the time that Defendants
8 warranted and sold the vehicles they knew that the vehicles did not conform to the
9 warranties and were inherently defective, and Defendants wrongfully and
10 fraudulently misrepresented and/or concealed material facts regarding their vehicles.
11 Plaintiffs and the Class were therefore induced to purchase the vehicles under false
12 and/or fraudulent pretenses.

13 1481. Moreover, many of the damages flowing from the Defective Vehicles
14 cannot be resolved through the limited remedy of “replacement or adjustments,” as
15 those incidental and consequential damages have already been suffered due to
16 Defendants’ fraudulent conduct as alleged herein, and due to their failure and/or
17 continued failure to provide such limited remedy within a reasonable time, and any
18 limitation on Plaintiffs’ and the Class’ remedies would be insufficient to make
19 Plaintiffs and the Class whole.

20 1482. Finally, due to the Defendants’ breach of warranties as set forth herein,
21 Plaintiffs and the Class assert as an additional and/or alternative remedy, as set forth
22 in MD. CODE COM. LAW § 2-608 for a revocation of acceptance of the goods, and for
23 a return to Plaintiffs and to the Class of the purchase price of all vehicles currently.
24
25
26
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1 1483. Toyota was provided notice of these issues by numerous complaints
2 filed against it, including the instant complaint, and by numerous individual letters
3 and communications sent by Plaintiffs and the Class before or within a reasonable
4 amount of time after Toyota issued the recall and the allegations of vehicle defects
5 became public.
6

7 1484. As a direct and proximate result of Toyota's breach of express
8 warranties, Plaintiffs and the Class have been damaged in an amount to be
9 determined at trial.

10 **COUNT III**

11 **BREACH OF THE IMPLIED WARRANTY OF MERCHANTABILITY**

12 **(Md. Code Com. Law § 2-314)**

13
14 1485. Plaintiffs reallege and incorporate by reference all paragraphs as though
15 fully set forth herein.

16 1486. Toyota is and was at all relevant times a merchant with respect to motor
17 vehicles.

18 1487. A warranty that the Defective Vehicles were in merchantable condition
19 was implied by law in the instant transactions.
20

21 1488. These vehicles, when sold and at all times thereafter, were not in
22 merchantable condition and are not fit for the ordinary purpose for which cars are
23 used. Specifically, the Defective Vehicles are inherently defective in that there are
24 defects in the vehicle control systems that permit sudden unintended acceleration to
25 occur; the Defective Vehicles do not have an adequate fail-safe to protect against
26 such SUA events, nor do they have a brake-override; and the ETCS system was not
27 adequately tested.
28

1 1489. Toyota was provided notice of these issues by numerous complaints
2 filed against it, including the instant complaint, and by numerous individual letters
3 and communications sent by Plaintiffs and the Class before or within a reasonable
4 amount of time after Toyota issued the recall and the allegations of vehicle defects
5 became public.
6

7 1490. As a direct and proximate result of Toyota's breach of the warranties of
8 merchantability, Plaintiffs and the Class have been damaged in an amount to be
9 proven at trial.

10 **COUNT IV**
11 **REVOCATION OF ACCEPTANCE**
12 **(Md. Code Com. Law § 2-608)**
13

14 1491. Plaintiffs reallege and incorporate by reference all paragraphs as though
15 fully set forth herein.

16 1492. Plaintiffs identified above demanded revocation and the demands were
17 refused.
18

19 1493. Plaintiffs and the Class had no knowledge of such defects and
20 nonconformities, were unaware of these defects, and reasonably could not have
21 discovered them when they purchased or leased their automobiles from Toyota. On
22 the other hand, Toyota was aware of the defects and nonconformities at the time of
23 sale and thereafter.

24 1494. Acceptance was reasonably induced by the difficulty of discovery of the
25 defects and nonconformities before acceptance.
26

27 1495. There has been no change in the condition of Plaintiffs' vehicles not
28 caused by the defects and nonconformities.

1 1496. When Plaintiffs sought to revoke acceptance, Toyota refused to accept
2 return of the Defective Vehicles and to refund Plaintiffs' purchase price and monies
3 paid.

4 1497. Plaintiffs and the Class would suffer economic hardship if they returned
5 their vehicles but did not receive the return of all payments made by them. Because
6 Toyota is refusing to acknowledge any revocation of acceptance and return
7 immediately any payments made, Plaintiffs and the Class have not re-accepted their
8 Defective Vehicles by retaining them.

9
10 1498. These defects and nonconformities substantially impaired the value of
11 the Defective Vehicles to Plaintiffs and the Class. This impairment stems from two
12 basic sources. First, the Defective Vehicles fail in their essential purpose because
13 they present an unreasonably high risk of sudden unintended acceleration (a risk
14 acknowledged by Toyota's recall), rendering them unsafe in a very material way.
15 Second, the repair and adjust warranty has failed of its essential purpose because
16 Toyota cannot repair or adjust the Defective Vehicles.

17
18 1499. Plaintiffs and the Class provided notice of their intent to seek revocation
19 of acceptance by a class-action lawsuit seeking such relief. In addition, Plaintiffs
20 (and many Class members) have requested that Toyota accept return of their vehicles
21 and return all payments made. Plaintiffs on behalf of themselves and the Class
22 hereby demand revocation and tender their Defective Vehicles.

23
24 1500. Plaintiffs and the Class would suffer economic hardship if they returned
25 their vehicles but did not receive the return of all payments made by them. Because
26 Toyota is refusing to acknowledge any revocation of acceptance and return
27 immediately any payments made, Plaintiffs and the Class have not re-accepted their
28

1 Defective Vehicles by retaining them, as they must continue using them due to the
2 financial burden of securing alternative means of transport for an uncertain and
3 substantial period of time.

4 1501. Finally, due to the Defendants' breach of warranties as set forth herein,
5 Plaintiffs and the Class assert as an additional and/or alternative remedy, as set forth
6 in MD. CODE COM. LAW § 2-608, for a revocation of acceptance of the goods, and for
7 a return to Plaintiffs and to the Class of the purchase price of all vehicles currently
8 owned.
9

10 1502. Consequently, Plaintiffs and the Class are entitled to revoke their
11 acceptances, receive all payments made to Toyota, and to all incidental and
12 consequential damages, including the costs associated with purchasing safer
13 vehicles, and all other damages allowable under law, all in amounts to be proven at
14 trial.
15

16 **COUNT V**

17 **BREACH OF CONTRACT/COMMON LAW WARRANTY**

18 **(Based On Maryland Law)**

19 1503. Plaintiffs reallege and incorporate by reference all paragraphs as though
20 fully set forth herein.
21

22 1504. To the extent Toyota's repair or adjust commitment is deemed not to be
23 a warranty under the Maryland Code, Plaintiffs plead in the alternative under
24 common law warranty and contract law. Toyota limited the remedies available to
25 Plaintiffs and the Class to just repairs and adjustments needed to correct defects in
26 materials or workmanship of any part supplied by Toyota, and/or warranted the
27 quality or nature of those services to Plaintiffs.
28

1506. As a direct and proximate result of Defendants' breach of contract or common law warranty, Plaintiffs and the Class have been damaged in an amount to be proven at trial, which shall include, but is not limited to, all compensatory damages, incidental and consequential damages, and other damages allowed by law.

1507. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1509. Defendants had a duty to disclose these safety issues because they consistently marketed their vehicles as safe and proclaimed that safety is one of Toyota's highest corporate priorities. Once Defendants made representations to the public about safety, Defendants were under a duty to disclose these omitted facts, because where one does speak one must speak the whole truth and not conceal any facts which materially qualify those facts stated. One who volunteers information must be truthful, and the telling of a half-truth calculated to deceive is fraud.

1 known to or reasonably discoverable by Plaintiffs and the Class. These omitted facts
2 were material because they directly impact the safety of the Defective Vehicles.
3 Whether or not a vehicle accelerates only at the driver's command, and whether a
4 vehicle will stop or not upon application of the brake by the driver, are material
5 safety concerns. Defendants possessed exclusive knowledge of the defects rendering
6 Defective Vehicles inherently more dangerous and unreliable than similar vehicles.
7

8 1511. Defendants actively concealed and/or suppressed these material facts, in
9 whole or in part, with the intent to induce Plaintiffs and the Class to purchase
10 Defective Vehicles at a higher price for the vehicles, which did not match the
11 vehicles' true value.
12

13 1512. Defendants still have not made full and adequate disclosure and
14 continue to defraud Plaintiffs and the Class.

15 1513. Plaintiffs and the Class were unaware of these omitted material facts
16 and would not have acted as they did if they had known of the concealed and/or
17 suppressed facts. Plaintiffs' and the Class' actions were justified. Defendants were
18 in exclusive control of the material facts and such facts were not known to the public
19 or the Class.
20

21 1514. As a result of the concealment and/or suppression of the facts, Plaintiffs
22 and the Class sustained damage. For those Plaintiffs and the Class who elect to
23 affirm the sale, these damages, include the difference between the actual value of
24 that which Plaintiffs and the Class paid and the actual value of that which they
25 received, together with additional damages arising from the sales transaction,
26 amounts expended in reliance upon the fraud, compensation for loss of use and
27 enjoyment of the property, and/or lost profits. For those Plaintiffs and the Class who
28

1 want to rescind the purchase, then those Plaintiffs and the Class are entitled to
2 restitution and consequential damages.

3 1515. Defendants' acts were done maliciously, oppressively, deliberately, with
4 intent to defraud, and in reckless disregard of Plaintiffs' and the Class' rights and
5 well-being to enrich Defendants. Defendants' conduct warrants an assessment of
6 punitive damages in an amount sufficient to deter such conduct in the future, which
7 amount is to be determined according to proof.

9 **COUNT VII**

10 **NEGLIGENCE**

11 **(Based On Maryland Law)**

12 1516. Plaintiffs reallege and incorporate by reference all paragraphs as though
13 fully set forth herein.

14 1517. Toyota had a duty to Plaintiffs and the Class to provide a safe product in
15 design and manufacture, to notify NHTSA, and to warn NHTSA of the heightened
16 propensity of the Defective Vehicles to unexpectedly accelerate out of the driver's
17 control and lack a fail-safe mechanism to overcome unintended acceleration.

18 1518. Toyota breached its duty of reasonable care to Plaintiffs and the Class
19 by designing the Defective Vehicles in such a manner that they have a heightened
20 propensity to suddenly and unexpectedly accelerate out of the driver's control and
21 lack a fail-safe mechanism to overcome unintended acceleration.

22 1519. Toyota breached its duty of reasonable care to Plaintiffs and the Class
23 by manufacturing and/or assembling the Defective Vehicles in such a manner that
24 they were prone to suddenly and unexpectedly accelerate out of the driver's control
25 and lack a fail-safe mechanism to overcome unintended acceleration.
26
27
28

1 including Plaintiffs and the Class. Consequently, Plaintiffs and the Class were
2 foreseeable users of the products which Toyota manufactured.

3 1527. The Defective Vehicles reached Plaintiffs and the Class without
4 substantial change in condition from the time they were manufactured by Toyota.
5

6 1528. The propensity of the Defective Vehicles to suddenly and unexpectedly
7 accelerate out of their driver's control without a fail-safe mechanism to overcome
8 unintended acceleration could not have been contemplated by any reasonable person
9 expected to operate the Defective Vehicles, and for that reason, presented an
10 unreasonably dangerous situation for foreseeable users of the Defective Vehicles
11 even though the Defective Vehicles were operated by foreseeable users in a
12 reasonable manner.
13

14 1529. Toyota should have reasonably foreseen that the dangerous conditions
15 of the Defective Vehicles suddenly and unexpectedly accelerating without a fail-safe
16 mechanism to overcome unintended acceleration would subject Plaintiffs and the
17 Class to harm.

18 1530. As a result of these defective designs, the Defective Vehicles are
19 unreasonably dangerous.
20

21 1531. Plaintiffs and the Class have used the Defective Vehicles reasonably
22 and as intended, to the fullest degree possible given their defective nature, and,
23 nevertheless, have suffered damages through no fault of their own.

24 1532. Safer, alternative designs existed for the Defective Vehicles.

25 1533. As a direct and proximate result of Toyota's design, manufacture,
26 assembly, marketing, and sales of the Defective Vehicles, Plaintiffs and the Class
27 have sustained and will continue to sustain the loss of the use of their vehicles,
28

1 economic losses, and consequential damages, and are, therefore, entitled to
2 compensatory relief according to proof, and entitled to a declaratory judgment that
3 Toyota is liable to Plaintiffs and the Class for breach of its duty to design,
4 manufacture, assemble, market, and sell a safe product, fit for its reasonably intended
5 use. Plaintiffs and the Class are therefore entitled to equitable relief as described
6 below.
7

8 1534. Plaintiffs and the Class demand judgment against Toyota for design
9 defects as prayed for below.

10 **COUNT IX**

11 **STRICT PRODUCTS LIABILITY – DEFECTIVE MANUFACTURING**

12 **(Based On Maryland Law)**

13
14 1535. Plaintiffs reallege and incorporate by reference all paragraphs as though
15 fully set forth herein.

16 1536. Toyota is the manufacturer, designer, distributor, seller, or supplier of
17 the Defective Vehicles.

18 1537. The Defective Vehicles manufactured, designed, sold, distributed,
19 supplied and/or placed in the stream of commerce by Toyota were defective in their
20 manufacture and construction such that they were unreasonably dangerous, were not
21 fit for the ordinary purposes for which they were intended, and/or did not meet the
22 reasonable expectations of any consumer.
23

24 1538. The Defective Vehicles manufactured, designed, sold, distributed,
25 supplied and/or placed in the stream of commerce by Toyota, were defective in their
26 manufacture and construction as described at the time they left Toyota's control.
27
28

1539. The Defective Vehicles are unreasonably dangerous due to their defective manufacture.

1540. As a direct and proximate result of Plaintiffs' purchase and use of the Defective Vehicles as manufactured, designed, sold, supplied and introduced into the stream of commerce by Toyota, Plaintiffs and the Class suffered economic losses, and will continue to suffer such damages and economic losses in the future.

1541. Plaintiffs demand judgment against Toyota for manufacturing defects as prayed for below.

COUNT X

**STRICT PRODUCTS LIABILITY –
DEFECT DUE TO NONCONFORMANCE WITH REPRESENTATIONS**

(Based On Maryland Law)

1542. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1543. Toyota is the manufacturer, designer, distributor, seller, or supplier of the Defective Vehicles, and Toyota made representations regarding the character or quality of the Defective Vehicles.

1544. The Defective Vehicles manufactured and supplied by Toyota were defective in that, when they left the hands of Toyota, they did not conform to the representations made by Toyota concerning the Defective Vehicles.

1545. Plaintiffs and the Class justifiably relied upon Toyota's representations regarding the Defective Vehicles when they purchased and used the Defective Vehicles.

1 1546. As a direct and proximate result of their reliance on Toyota's
2 representations regarding the character and quality of the Defective Vehicles,
3 Plaintiffs and the Class suffered damages and economic losses, and will continue to
4 suffer such damages and economic losses in the future.

5
6 1547. Plaintiffs demand judgment against Toyota for manufacturing defects as
7 prayed for below.

8 **COUNT XI**
9 **UNJUST ENRICHMENT**
10 **(Based On Maryland Law)**

11 1548. Plaintiffs reallege and incorporate by reference all paragraphs as though
12 fully set forth herein.

13
14 1549. As a result of their wrongful and fraudulent acts and omissions, as set
15 forth above, pertaining to the design defect of their vehicles and the concealment of
16 the defect, Defendants charged a higher price for their vehicles than the vehicles'
17 true value and Defendants obtained monies which rightfully belong to Plaintiffs.

18 1550. Defendants knowingly enjoyed the benefit of increased financial gains,
19 to the detriment of Plaintiffs and the Class, who paid a higher price for vehicles
20 which actually had lower values. It would be inequitable and unjust for Defendants
21 to retain these wrongfully obtained profits.

22
23 1551. Plaintiffs, therefore, are entitled to restitution and seek and order
24 establishing Toyota as constructive trustees of the profits unjustly obtained, plus
25 interest.
26
27
28

MASSACHUSETTS

COUNT I

**VIOLATION OF THE MASSACHUSETTS
CONSUMER PROTECTION ACT**

(Chapter 93A)

1552. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1553. The conduct of Toyota as set forth herein constitutes unfair and deceptive acts or practices in violation of the Massachusetts Consumer Protection Act, Mass. Gen. L. ch. 93A, including, but not limited to, Toyota's manufacture and sale of vehicles with a sudden acceleration defect that lack brake-override or other effective fail-safe mechanisms, which Toyota failed to adequately investigate, disclose and remedy, and its misrepresentations and omissions regarding the safety and reliability of its vehicles, which misrepresentations and omissions possessed the tendency to deceive.

1554. Toyota engages in the conduct of trade or commerce and the misconduct alleged herein occurred in trade or commerce.

1555. In satisfaction of MASS. GEN. LAWS CH. 93A, § 9(3), Plaintiffs have made demand on Toyota more than 30 days prior to this filing by numerous letters sent by Plaintiffs and the Class. These letters asserted that rights of consumers as claimants had been violated, described the unfair and deceptive acts committed by Toyota, and specified the injuries that Plaintiffs and the Class have suffered and the relief they seek. Thus, these letters satisfy section 9(3).

1 and promote the benefits of ETCS. These warranties were made, *inter alia*, in
2 advertisements, in Toyota's "e-brochures," and in uniform statements provided by
3 Toyota to be made by salespeople. These affirmations and promises were part of the
4 basis of the bargain between the parties.

5
6 1563. These additional warranties were also breached because the Defective
7 Vehicles were not fully operational, safe, or reliable (and remained so even after the
8 problems were acknowledged and a recall "fix" was announced), nor did they
9 comply with the warranties expressly made to purchasers or lessees. Toyota did not
10 provide at the time of sale, and has not provided since then, vehicles conforming to
11 these express warranties.

12
13 1564. Furthermore, the limited warranty of repair and/or adjustments to
14 defective parts, fails in its essential purpose because the contractual remedy is
15 insufficient to make the Plaintiffs and the Class whole and because the Defendants
16 have failed and/or have refused to adequately provide the promised remedies within
17 a reasonable time.

18
19 1565. Accordingly, recovery by the Plaintiffs is not limited to the limited
20 warranty of repair or adjustments to parts defective in materials or workmanship, and
21 Plaintiffs seek all remedies as allowed by law.

22 1566. Also, as alleged in more detail herein, at the time that Defendants
23 warranted and sold the vehicles they knew that the vehicles did not conform to the
24 warranties and were inherently defective, and Defendants wrongfully and
25 fraudulently misrepresented and/or concealed material facts regarding their vehicles.
26 Plaintiffs and the Class were therefore induced to purchase the vehicles under false
27 and/or fraudulent pretenses.
28

1 1567. Moreover, many of the damages flowing from the Defective Vehicles
2 cannot be resolved through the limited remedy of “replacement or adjustments,” as
3 those incidental and consequential damages have already been suffered due to
4 Defendants’ fraudulent conduct as alleged herein, and due to their failure and/or
5 continued failure to provide such limited remedy within a reasonable time, and any
6 limitation on Plaintiffs’ and the Class’ remedies would be insufficient to make
7 Plaintiffs and the Class whole.
8

9 1568. Finally, due to the Defendants’ breach of warranties as set forth herein,
10 Plaintiffs and the Class assert as an additional and/or alternative remedy, as set forth
11 in ALM GL ch. 106, § 2-608, for a revocation of acceptance of the goods, and for a
12 return to Plaintiffs and to the Class of the purchase price of all vehicles currently
13 owned.
14

15 1569. Toyota was provided notice of these issues by numerous complaints
16 filed against it, including the instant complaint, and by numerous individual letters
17 and communications sent by Plaintiffs and the Class before or within a reasonable
18 amount of time after Toyota issued the recall and the allegations of vehicle defects
19 became public.
20

21 1570. As a direct and proximate result of Toyota’s breach of express
22 warranties, Plaintiffs and the Class have been damaged in an amount to be
23 determined at trial.
24
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28

COUNT III

BREACH OF THE IMPLIED WARRANTY OF MERCHANTABILITY

(ALM GL ch. 106, § 2-314)

1571. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1572. Toyota is and was at all relevant times a merchant with respect to motor vehicles.

1573. A warranty that the Defective Vehicles were in merchantable condition is implied by law in the instant transactions.

1574. These vehicles, when sold and at all times thereafter, were not in merchantable condition and are not fit for the ordinary purpose for which cars are used. Specifically, the Defective Vehicles are inherently defective in that there are defects in the vehicle control systems that permit sudden unintended acceleration to occur; the Defective Vehicles do not have an adequate fail-safe to protect against such SUA events, nor do they have a brake-override; and the ETCS system was not adequately tested.

1575. Toyota was provided notice of these issues by numerous complaints filed against it, including the instant complaint, and by numerous individual letters and communications sent by Plaintiffs and the Class before or within a reasonable amount of time after Toyota issued the recall and the allegations of vehicle defects became public.

1576. As a direct and proximate result of Toyota's breach of the warranties of merchantability, Plaintiffs and the Class have been damaged in an amount to be proven at trial.

COUNT IV

REVOCATION OF ACCEPTANCE

(ALM GL ch. 106, § 2-608)

1577. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1578. Plaintiffs identified above demanded revocation and the demands were refused.

1579. Plaintiffs and the Class had no knowledge of such defects and nonconformities, were unaware of these defects, and reasonably could not have discovered them when they purchased or leased their automobiles from Toyota. On the other hand, Toyota was aware of the defects and nonconformities at the time of sale and thereafter.

1580. Acceptance was reasonably induced by the difficulty of discovery of the defects and nonconformities before acceptance.

1581. There has been no change in the condition of Plaintiffs' vehicles not caused by the defects and nonconformities.

1582. When Plaintiffs sought to revoke acceptance, Toyota refused to accept return of the Defective Vehicles and to refund Plaintiffs' purchase price and monies paid.

1583. Plaintiffs and the Class would suffer economic hardship if they returned their vehicles but did not receive the return of all payments made by them. Because Toyota is refusing to acknowledge any revocation of acceptance and return immediately any payments made, Plaintiffs and the Class have not re-accepted their Defective Vehicles by retaining them.

1 1584. These defects and nonconformities substantially impaired the value of
2 the Defective Vehicles to Plaintiffs and the Class. This impairment stems from two
3 basic sources. First, the Defective Vehicles fail in their essential purpose because
4 they present an unreasonably high risk of sudden unintended acceleration (a risk
5 acknowledged by Toyota's recall), rendering them unsafe in a very material way.
6 Second, the repair and adjust warranty has failed of its essential purpose because
7 Toyota cannot repair or adjust the Defective Vehicles.
8

9 1585. Plaintiffs and the Class provided notice of their intent to seek revocation
10 of acceptance by a class-action lawsuit seeking such relief. In addition, Plaintiffs
11 (and many Class members) have requested that Toyota accept return of their vehicles
12 and return all payments made. Plaintiffs on behalf of themselves and the Class
13 hereby demand revocation and tender their Defective Vehicles.
14

15 1586. Plaintiffs and the Class would suffer economic hardship if they returned
16 their vehicles but did not receive the return of all payments made by them. Because
17 Toyota is refusing to acknowledge any revocation of acceptance and return
18 immediately any payments made, Plaintiffs and the Class have not re-accepted their
19 Defective Vehicles by retaining them, as they must continue using them due to the
20 financial burden of securing alternative means of transport for an uncertain and
21 substantial period of time.
22

23 1587. Finally, due to the Defendants' breach of warranties as set forth herein,
24 Plaintiffs and the Class assert as an additional and/or alternative remedy, as set forth
25 in ALM GL ch. 106, § 2-608, for a revocation of acceptance of the goods, and for a
26 return to Plaintiffs and to the Class of the purchase price of all vehicles currently
27 owned.
28

1 1588. Consequently, Plaintiffs and the Class are entitled to revoke their
2 acceptances, receive all payments made to Toyota, and to all incidental and
3 consequential damages, including the costs associated with purchasing safer vehicles,
4 and all other damages allowable under law, all in amounts to be proven at trial.
5

6 **COUNT V**

7 **BREACH OF CONTRACT/COMMON LAW WARRANTY**

8 **(Based On Massachusetts Law)**

9 1589. Plaintiffs reallege and incorporate by reference all paragraphs as though
10 fully set forth herein.
11

12 1590. To the extent Toyota's repair or adjust commitment is deemed not to be
13 a warranty under Massachusetts's Commercial Code, Plaintiffs plead in the
14 alternative under common law warranty and contract law. Toyota limited the
15 remedies available to Plaintiffs and the Class to just repairs and adjustments needed
16 to correct defects in materials or workmanship of any part supplied by Toyota,
17 and/or warranted the quality or nature of those services to Plaintiffs.
18

19 1591. Toyota breached this warranty or contract obligation by failing to repair
20 the Defective Vehicles evidencing a sudden unintended acceleration problem,
21 including those that were recalled, or to replace them.

22 1592. As a direct and proximate result of Defendants' breach of contract or
23 common law warranty, Plaintiffs and the Class have been damaged in an amount to
24 be proven at trial, which shall include, but is not limited to, all compensatory
25 damages, incidental and consequential damages, and other damages allowed by law.
26
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COUNT VI

UNJUST ENRICHMENT

(Based On Massachusetts Law)

1593. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1594. Toyota had knowledge of the safety defects in its vehicles, which it failed to disclose to Plaintiffs and the Class.

1595. As a result of their wrongful and fraudulent acts and omissions, as set forth above, pertaining to the design defect of their vehicles and the concealment of the defect, Toyota charged a higher price for their vehicles than the vehicles' true value and Toyota obtained monies which rightfully belong to Plaintiffs.

1596. Toyota appreciated, accepted and retained the non-gratuitous benefits conferred by Plaintiffs and the Class, who without knowledge of the safety defects paid a higher price for vehicles which actually had lower values. It would be inequitable and unjust for Toyota to retain these wrongfully obtained profits.

1597. Plaintiffs, therefore, are entitled to restitution and seek an order establishing Toyota as constructive trustees of the profits unjustly obtained, plus interest.

MICHIGAN

COUNT I

VIOLATION OF THE MICHIGAN CONSUMER PROTECTION ACT

(Mich. Comp. Laws § 445.901, *et seq.*)

1598. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1 1599. Defendants misrepresented the safety of the Defective Vehicles after
2 learning of their defects with the intent that Plaintiffs relied on such representations
3 in their decision regarding the purchase, lease and/or use of the Defective Vehicles.

4 1600. Plaintiffs did, in fact, rely on such representations in their decision
5 regarding the purchase, lease and/or use of the Defective Vehicles.
6

7 1601. Through those misleading and deceptive statements and false promises,
8 Defendants violated the Michigan Consumer Protection Act.

9 1602. The Michigan Consumer Protection Act applies to Defendants'
10 transactions with Plaintiffs because Defendants' deceptive scheme was carried out in
11 Michigan and affected Plaintiffs.
12

13 1603. Defendants also failed to advise NHSTA and the public about what they
14 knew about the sudden and unintended acceleration defects in the Defective
15 Vehicles.

16 1604. Plaintiffs relied on Defendants' silence as to known defects in
17 connection with their decision regarding the purchase, lease and/or use of the
18 Defective Vehicles.
19

20 1605. As a direct and proximate result of Defendants' deceptive conduct and
21 violation of the Michigan Consumer Protection Act, Plaintiffs have sustained and
22 will continue to sustain economic losses and other damages for which they are
23 entitled to compensatory and equitable damages and declaratory relief in an amount
24 to be proven at trial.
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COUNT II

BREACH OF EXPRESS WARRANTY

(Mich. Comp. Laws § 440.2313)

1606. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1607. Defendants expressly warranted – through statements and advertisements described above – that the vehicles were of high quality, and at a minimum, would actually work properly and safely.

1608. Defendants breached this warranty by knowingly selling to Plaintiffs vehicles with dangerous defects, and which were not of high quality.

1609. Plaintiffs have been damaged as a direct and proximate result of the breaches by Defendants in that the Defective Vehicles purchased by Plaintiffs were and are worth far less than what the Plaintiffs paid to purchase, which was reasonably foreseeable to Defendants.

COUNT III

BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY

(Mich. Comp. Laws § 440.2314)

1610. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1611. Defendants impliedly warranted that their vehicles were of good and merchantable quality and fit, and safe for their ordinary intended use – transporting the driver and passengers in reasonably safety during normal operation, and without unduly endangering them or members of the public.

1 1612. As described above, there were dangerous defects in the vehicles
2 manufactured, distributed, and/or sold by Defendants, which Plaintiffs purchased,
3 including, but not limited to, defects that caused the vehicles to suddenly and
4 unintentionally accelerate, and the lack of safety slow and stop the vehicle when
5 such acceleration occurred.
6

7 1613. These dangerous defects existed at the time the vehicles left
8 Defendants' manufacturing facilities and at the time they were sold to Plaintiffs.
9 Furthermore, because of these dangerous defects, Plaintiffs did not receive the
10 benefit of their bargain and the vehicles have suffered a diminution in value.
11

12 1614. These dangerous defects were the direct and proximate cause of
13 damages to the Plaintiffs.

14 **MINNESOTA**

15 **COUNT I**

16 **VIOLATION OF MINNESOTA FALSE STATEMENT**
17 **IN ADVERTISING STATUTE**

18 **(Minn. Stat. §§ 325F.67 *et seq.*)**

19 1615. Plaintiffs reallege and incorporate by reference all paragraphs as though
20 fully set forth herein.

21 1616. Defendants produced and published advertisements and deceptive and
22 misleading statements on the safety and reliability of the Defective Vehicles, even
23 after learning of their defects, with the intent to sell the Defective Vehicles.
24

25 1617. Defendants continue to represent or otherwise disseminate misleading
26 information about the defect and cause of the defect with the intent to induce the
27 public to buy the Defective Vehicles.
28

1 1618. Defendants concealed their deceptive practices in order to increase the
2 sale of and profit from the Defective Vehicles.

3 1619. Defendants violated the Minnesota False Statements in Advertising Act,
4 MINN. STAT. § 325F.67, *et seq.*, by publicly misrepresenting safety of the Defective
5 Vehicles, including the cause of the sudden and unintended acceleration problem,
6 both prior and subsequent to the various recalls.

7
8 1620. Defendants also failed to advise the NHTSA and the public about what
9 it knew about the sudden and unintended acceleration.

10 1621. The Minnesota False Statements in Advertising Act applies to
11 Plaintiffs' transactions with Defendants because Defendants' deceptive scheme was
12 carried out in Minnesota and affected Plaintiffs.

13
14 1622. As a direct and proximate result of Defendants' deceptive, unfair, and
15 fraudulent conduct and violations of MINN. STAT. § 325F.67, *et seq.*, Plaintiffs have
16 sustained and will continue to sustain economic losses and other damages for which
17 they are entitled to compensatory and equitable damages and declaratory relief in an
18 amount to be proven at trial.

19
20 **COUNT II**

21 **VIOLATION OF MINNESOTA UNIFORM DECEPTIVE TRADE**
22 **PRACTICES ACT**

23 **(Minn. Stat. § 325D.43-48, *et seq.*)**

24 1623. Plaintiffs reallege and incorporate by reference all paragraphs as though
25 fully set forth herein

1 1624. Defendants engaged in – and continue to engage in – conduct that
2 violates the Minnesota Deceptive Trade Practices Act, MINN. STAT. § 325D.44, *et*
3 *seq.* The violations include the following:

4 a. Defendants violated MINN. STAT. § 325D.44(5) by representing
5 the Defective Vehicles as having characteristics, uses, and benefits of safe and
6 mechanically sound vehicles while knowing that the statements were false and the
7 Defective Vehicles contained defects;

8 b. Defendants violated MINN. STAT. § 325D.44(7) by representing
9 the Defective Vehicles as a non-defective product of a particular standard, quality, or
10 grade while knowing the statements were false and the Defective Vehicles contained
11 defects;

12 c. Defendants violated MINN. STAT. § 325D.44(9) by advertising,
13 marketing, and selling the Defective Vehicles as reliable and without a known defect
14 while knowing those claims were false; and

15 d. Defendants violated MINN. STAT. § 325D.44(13) by creating a
16 likelihood of confusion and/or misrepresenting the safety of the Defective Vehicles.

17 1625. Defendants’ deceptive scheme was carried out in Minnesota and
18 affected Plaintiffs.

19 1626. Defendants also failed to advise the NHSTA and the public about what
20 it knew about the sudden and unintended acceleration.

21 1627. As a direct and proximate result of Defendants’ deceptive conduct and
22 violation of MINN. STAT. § 325D.44, *et seq.*, Plaintiffs have sustained and will
23 continue to sustain economic losses and other damages for which they are entitled to
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1 compensatory and equitable damages and declaratory relief in an amount to be
2 proven at trial.

3 **COUNT III**

4 **VIOLATION OF MINNESOTA PREVENTION OF**
5 **CONSUMER FRAUD ACT**

6 **(Minn. Stat. § 325F.68, *et seq.*)**

7 1628. Plaintiffs reallege and incorporate by reference all paragraphs as though
8 fully set forth herein.

9 1629. Defendants misrepresented the safety of the Defective Vehicles after
10 learning of their defects with the intent that Plaintiffs relied on such representations
11 in their decision regarding the purchase, lease and/or use of the Defective Vehicles.

12 1630. Plaintiffs did, in fact, rely on such representations in their decision
13 regarding the purchase, lease and/or use of the Defective Vehicles.

14 1631. Through these misleading and deceptive statements and false promises,
15 Defendants violated MINN. STAT. § 325F.69.

16 1632. The Minnesota Prevention of Consumer Fraud Act applies to
17 Defendants' transactions with Plaintiffs because Defendants' deceptive scheme was
18 carried out in Minnesota and affected Plaintiffs.

19 1633. Defendants also failed to advise the NHSTA and the public about what
20 they knew about the sudden and unintended acceleration defects in the Defective
21 Vehicles.

22 1634. Plaintiffs relied on Defendants' silence as to known defects in
23 connection with their decision regarding the purchase, lease and/or use of the
24 Defective Vehicles.

1 without adequate fail-safe mechanisms because Plaintiffs relied on Toyota's material
2 representations that the vehicles they were purchasing were safe and free from
3 defects.

4 1641. The aforementioned concealment was material because if it had been
5 disclosed Plaintiffs would not have bought or leased the vehicles.
6

7 1642. The aforementioned representations were material because they were
8 facts that would typically be relied on by a person purchasing or leasing a new motor
9 vehicle. Toyota knew its representations were false because it knew that people had
10 died in its vehicles' unintended acceleration between 2002 and 2009. Toyota
11 intentionally made the false statements in order to sell vehicles.
12

13 1643. Plaintiffs relied on Toyota's reputation – along with Toyota's failure to
14 disclose the acceleration problems and Toyota's affirmative assurance that its
15 vehicles were safe and reliable and other similar false statements – in purchasing or
16 leasing Toyota's vehicles.

17 1644. As a result of their reliance, Plaintiffs have been injured in an amount to
18 be proven at trial, including, but not limited to, their lost benefit of the bargain and
19 overpayment at the time of purchase and/or the diminished value of their vehicles.
20

21 1645. Defendants' conduct was knowing, intentional, with malice,
22 demonstrated a complete lack of care, and was in reckless disregard for the rights of
23 Plaintiffs. Plaintiffs are therefore entitled to an award of punitive damages.
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COUNT V

BREACH OF EXPRESS WARRANTY

(Minn. Stat. § 325G.19 Express Warranties)

1646. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1647. Defendants are and at all relevant times were merchants as defined by the Uniform Commercial Code (“UCC”).

1648. Defendants expressly warranted – through uniform statements, “e-brochures” and advertisements described above – that the vehicles were of high quality, and, at a minimum, would actually work properly and safely. These warranties became part of the basis of the bargain.

1649. Defendants breached this warranty by knowingly selling to Plaintiffs vehicles with dangerous defects, and which were not of high quality.

1650. Plaintiffs have been damaged as a direct and proximate result of the breaches by Defendants in that the Defective Vehicles purchased by Plaintiffs were and are worth far less than what the Plaintiffs paid to purchase, which was reasonably foreseeable to Defendants.

1651. Plaintiffs were unaware of these defects and could not have reasonably discovered them when they purchased their vehicles from Toyota.

1652. Plaintiffs and the Class are entitled to damages, including the diminished value of their vehicles and the value of the non-use of the vehicles pending successful repair, in addition to any costs associated with purchasing safer vehicles, incidental and consequential damages, and all other damages allowable under the law, including such further relief as the Court deems just and proper.

COUNT VI

**BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY
(STRICT LIABILITY)**

**(Minn. Stat. § 336.2-314 Implied Warranty;
Merchantability; Usage Of Trade)**

1653. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1654. Defendants impliedly warranted that their vehicles were of good and merchantable quality and fit, and safe for their ordinary intended use – transporting the driver and passengers in reasonable safety during normal operation, and without unduly endangering them or members of the public.

1655. As described above, there were dangerous defects in the vehicles manufactured, distributed, and/or sold by Defendants, which Plaintiffs purchased, including, but not limited to, defects that caused the vehicles to suddenly and unintentionally accelerate, and the lack of safety systems which would prevent such acceleration or allow a driver to safely slow and stop the vehicle when such acceleration occurred.

1656. These dangerous defects existed at the time the vehicles left Defendants' manufacturing facilities and at the time they were sold to the Plaintiffs. Furthermore, because of these dangerous defects, Plaintiff did not receive the benefit of their bargain and the vehicles have suffered a diminution in value.

1657. These dangerous defects were the direct and proximate cause of damages to the Plaintiffs.

COUNT VII

UNJUST ENRICHMENT

(Based On Minnesota Law)

1658. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1659. Plaintiffs paid Toyota the value of vehicles that are non-defective, and in exchange, Toyota provided Plaintiffs vehicles that are, in fact, defective.

1660. Further, Plaintiffs paid Toyota the value for vehicles that would not be compromised by substantial, invasive repairs, and in return received vehicles that require such repairs.

1661. Further, Plaintiffs paid Toyota for vehicles they could operate, and in exchange, Toyota provided Plaintiffs vehicles that could not be normally operated because their defects posed the possibility of life-threatening injuries or death.

1662. As such, Plaintiffs conferred a windfall upon Toyota., which knows of the windfall and has retained such benefits, which would be unjust for Toyota to retain.

1663. As a direct and proximate result of Toyota's unjust enrichment, Plaintiffs have suffered and continue to suffer various damages, including, but not limited to, restitution of all amounts by which Defendants were enriched through their misconduct.

COUNT VIII

STRICT LIABILITY (DESIGN DEFECT)

(Based On Minnesota Law)

1664. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1665. Defendants are and have been at all times pertinent to this Complaint, engaged in the business of designing, manufacturing, assembling, promoting, advertising, distributing and selling Defective Vehicles in the United States, including those owned or leased by the Plaintiffs and the Class.

1666. Defendants knew and anticipated that the vehicles owned or leased by Plaintiffs and the Class would be sold to and operated by purchasers and/or eventual owners or lessors of Defendants' vehicles, including Plaintiffs and the Class. Defendants also knew that these Defective Vehicles would reach the Plaintiffs and the Class without substantial change in their condition from the time the vehicles departed the Defendants' assembly lines.

1667. Defendants designed the Defective Vehicles defectively, causing them to fail to perform as safely as an ordinary consumer would expect when used in an intended and reasonably foreseeable manner.

1668. Defendants had the capability to use a feasible, alternative, safer design, and failed to correct the design defects.

1669. The risks inherent in the design of the Defective Vehicles outweigh significantly any benefits of such design.

1 design, manufacturing and lack of sufficient warnings caused them to have an
2 unreasonably dangerous propensity to sudden and unintended acceleration.

3 1677. The Defendants failed to adequately warn Plaintiffs and the Class when
4 they became aware of the defect that caused Plaintiffs and the Class vehicles to be
5 prone to sudden and unintended acceleration.
6

7 1678. Defendants also failed to timely recall the vehicles or take any action to
8 timely warn Plaintiffs or the Class of these problems and instead continue to subject
9 Plaintiffs and the Class to harm.

10 1679. Defendants knew, or should have known, that these defects were not
11 readily recognizable to an ordinary consumer and that consumers would lease,
12 purchase and use these products without inspection.
13

14 1680. Defendants should have reasonably foreseen that the sudden and
15 unintended defect in the Defective Vehicles would subject the Plaintiffs and the
16 Class to harm resulting from the defect.

17 1681. Plaintiffs and the Class have used the Defective Vehicles for their
18 intended purpose and in a reasonable and foreseeable manner.
19

20 1682. As a direct and proximate result of Defendants' wrongful conduct,
21 Plaintiffs and the Class have sustained and will continue to sustain economic losses
22 and other damages for which they are entitled to compensatory and equitable
23 damages and declaratory relief in an amount to be proven at trial.
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1 **MISSISSIPPI**

2 **COUNT I**

3 **MISSISSIPPI PRODUCTS LIABILITY ACT**

4 **(Miss. Code Ann. § 11-1-63, *et seq.*)**

5
6 1683. Plaintiffs reallege and incorporate by reference all paragraphs as though
7 fully set forth herein.

8 1684. Toyota has defectively designed, manufactured, sold or otherwise
9 placed in the stream of commerce Defective Vehicles.

10 1685. Toyota is strictly liable in tort for the Plaintiffs' injuries and damages
11 and the Plaintiffs respectfully rely upon the Doctrine as set forth in RESTATEMENT,
12 SECOND, TORTS § 402(a).

13
14 1686. Because of the negligence of the design and manufacture of the
15 Defective Vehicle, by which Plaintiffs were injured and the failure of Toyota to warn
16 Plaintiffs of the certain dangers concerning the operation of the Defective Vehicles
17 which were known to Defendants but were unknown to Plaintiffs, the Defendants
18 have committed a tort.

19
20 1687. The Defective Vehicles which caused Plaintiffs' injuries were
21 manufactured by Toyota.

22 1688. At all times herein material, Defendants negligently and carelessly did
23 certain acts and failed to do other things, including, but not limited to, inventing,
24 developing, designing, researching, guarding, manufacturing, building, inspecting,
25 investigating, testing, labeling, instructing, and negligently and carelessly failing to
26 provide adequate and fair warning of the characteristics, dangers and hazards
27 associated with the operation of the vehicles in question to users of the Defective
28

1 Vehicles, including, but not limited to, Plaintiffs, and willfully failing to recall or
2 otherwise cure one or more of the defects in the product involved thereby directly
3 and proximately causing the hereinafter described injury.

4 1689. The Defective Vehicles were unsafe for their use by reason of the fact
5 that they were defective. For example, the Defective Vehicles were defective in their
6 design, guarding, development, manufacture, and lack of permanent, accurate,
7 adequate and fair warning of the characteristics, danger and hazard to the user,
8 prospective user and members of the general public, including, but not limited to,
9 Plaintiffs, and because Defendants failed to recall or otherwise cure one or more
10 defects in the vehicles involved thereby directly and proximately causing the
11 described injuries.
12

13 1690. Defendants, and each of them, knew or reasonably should have known
14 that the above mentioned product would be purchased and used without all necessary
15 testing or inspection for defects by the Plaintiffs and the Class.
16

17 1691. Plaintiffs were not aware of those defects at any time before the incident
18 and occurrence mentioned in this complaint, or else Plaintiff was unable, as a
19 practical matter, to cure that defective condition.
20

21 1692. Plaintiffs used the product in a foreseeable manner.

22 1693. As a proximate result of the negligence of Defendants, Plaintiffs
23 suffered injuries and damages.
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COUNT II

BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY

(Miss. Code Ann. §§ 75-2-314)

1694. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1695. Toyota has defectively designed, manufactured, sold or otherwise placed in the stream of commerce defective vehicles as set forth above.

1696. Toyota impliedly warranted that the Defective Vehicles were merchantable and for the ordinary purpose for which they were designed, manufactured, and sold.

1697. The Defective Vehicles were not in merchantable condition or fit for ordinary use due to the defects described above and as a result of the breach of warranty of merchantability by Toyota, Plaintiffs sustained injuries and damages.

COUNT III

NEGLIGENCE

(Under Mississippi Law)

1698. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1699. Toyota has defectively designed, manufactured, sold or otherwise placed in the stream of commerce defective vehicles as set forth above.

1700. Toyota had a duty to manufacture a product which would be safe for its intended and foreseeable uses and users, including the use to which it was put by Plaintiff. Toyota breached its duty to Plaintiffs and the Class because it was

1 negligent in the design, development, manufacture, and testing of the Defective
2 Vehicles.

3 1701. Toyota was negligent in its design, development, manufacture, and
4 testing of the Defective Vehicles because it knew, or in the exercise of reasonable
5 care should have known, that they were prone to sudden unintended and dangerous
6 acceleration and lacked proper fail-safe mechanisms.
7

8 1702. Toyota negligently failed to adequately warn and instruct Plaintiffs and
9 the Class of the defective nature of the Defective Vehicles, of the high degree of risk
10 attendant to the using them, given that the users of the Defective Vehicles would be
11 ignorant of the said defective.
12

13 1703. Whereupon, the Plaintiffs respectfully rely upon the RESTATEMENT,
14 SECOND, TORTS § 395.

15 1704. Toyota further breached its duties to Plaintiffs by supplying directly
16 and/or through a third person to be used by such foreseeable persons such as
17 Plaintiffs when:

18 a. Toyota knew or had reason to know, that the Subject Vehicle was
19 dangerous or was likely to be dangerous for the use for which it was supplied; and
20

21 b. Toyota failed to exercise reasonable care to inform customers of
22 the dangerous condition, or of the facts under which the Subject Vehicle is likely to
23 be dangerous.

24 1705. As a result of Toyota's negligence, Plaintiffs and the Class suffered
25 damages.
26
27
28

COUNT IV

REVOCATION OF ACCEPTANCE

(Miss. Code Ann. § 75-2-608)

1706. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1707. Plaintiffs identified above demanded revocation and the demands were refused.

1708. Plaintiffs and the Class had no knowledge of such defects and nonconformities, were unaware of these defects, and reasonably could not have discovered them when they purchased or leased their automobiles from Toyota. On the other hand, Toyota was aware of the defects and nonconformities at the time of sale and thereafter.

1709. Acceptance was reasonably induced by the difficulty of discovery of the defects and nonconformities before acceptance.

1710. There has been no change in the condition of Plaintiffs' vehicles not caused by the defects and nonconformities.

1711. When Plaintiffs sought to revoke acceptance, Toyota refused to accept return of the Defective Vehicles and to refund Plaintiffs' purchase price and monies paid.

1712. Plaintiffs and the Class would suffer economic hardship if they returned their vehicles but did not receive the return of all payments made by them. Because Toyota is refusing to acknowledge any revocation of acceptance and return immediately any payments made, Plaintiffs and the Class have not re-accepted their Defective Vehicles by retaining them.

1 1713. These defects and nonconformities substantially impaired the value of
2 the Defective Vehicles to Plaintiffs and the Class. This impairment stems from two
3 basic sources. First, the Defective Vehicles fail in their essential purpose because
4 they present an unreasonably high risk of sudden unintended acceleration (a risk
5 acknowledged by Toyota's recall), rendering them unsafe in a very material way.
6 Second, the repair and adjust warranty has failed of its essential purpose because
7 Toyota cannot repair or adjust the Defective Vehicles.
8

9 1714. Plaintiffs and the Class provided notice of their intent to seek revocation
10 of acceptance by a class-action lawsuit seeking such relief. In addition, Plaintiffs
11 (and many Class members) have requested that Toyota accept return of their vehicles
12 and return all payments made. Plaintiffs on behalf of themselves and the Class
13 hereby demand revocation and tender their Defective Vehicles.
14

15 1715. Plaintiffs and the Class would suffer economic hardship if they returned
16 their vehicles but did not receive the return of all payments made by them. Because
17 Toyota is refusing to acknowledge any revocation of acceptance and return
18 immediately any payments made, Plaintiffs and the Class have not re-accepted their
19 Defective Vehicles by retaining them, as they must continue using them due to the
20 financial burden of securing alternative means of transport for an uncertain and
21 substantial period of time.
22

23 1716. Finally, due to the Defendants' breach of warranties as set forth herein,
24 Plaintiffs and the Class assert as an additional and/or alternative remedy, as set forth
25 in MISS. CODE ANN. § 75-2-602, for a revocation of acceptance of the goods, and for
26 a return to Plaintiffs and to the Class of the purchase price of all vehicles currently
27
28

1 owned and for such other incidental and consequential damages as allowed under
2 MISS. CODE ANN. § 75-2-602

3 1717. Consequently, Plaintiffs and the Class are entitled to revoke their
4 acceptances, receive all payments made to Toyota, and to all incidental and
5 consequential damages, including the costs associated with purchasing safer vehicles,
6 and all other damages allowable under law, all in amounts to be proven at trial.
7

8 **COUNT V**

9 **NEGLIGENT MISREPRESENTATION/FRAUD**

10 **(Based On Mississippi Law)**

11 1718. Plaintiffs reallege and incorporate by reference all paragraphs as though
12 fully set forth herein.
13

14 1719. As set forth above, Defendants concealed and/or suppressed material
15 facts concerning the safety of their vehicles.

16 1720. Defendants had a duty to disclose these safety issues because they
17 consistently marketed their vehicles as safe and proclaimed that safety is one of
18 Toyota's highest corporate priorities. Once Defendants made representations to the
19 public about safety, Defendants were under a duty to disclose these omitted facts,
20 because where one does speak one must speak the whole truth and not conceal any
21 facts which materially qualify those facts stated. One who volunteers information
22 must be truthful, and the telling of a half-truth calculated to deceive is fraud.
23

24 1721. In addition, Defendants had a duty to disclose these omitted material
25 facts because they were known and/or accessible only to Defendants who have
26 superior knowledge and access to the facts, and Defendants knew they were not
27 known to or reasonably discoverable by Plaintiffs and the Class. These omitted facts
28

1 were material because they directly impact the safety of the Defective Vehicles.
2 Whether or not a vehicle accelerates only at the driver's command, and whether a
3 vehicle will stop or not upon application of the brake by the driver, are material
4 safety concerns. Defendants possessed exclusive knowledge of the defects rendering
5 Defective Vehicles inherently more dangerous and unreliable than similar vehicles.
6

7 1722. Defendants actively concealed and/or suppressed these material facts, in
8 whole or in part, with the intent to induce Plaintiffs and the Class to purchase
9 Defective Vehicles at a higher price for the vehicles, which did not match the
10 vehicles' true value.

11 1723. Defendants still have not made full and adequate disclosure and
12 continue to defraud Plaintiffs and the Class.
13

14 1724. Plaintiffs and the Class were unaware of these omitted material facts
15 and would not have acted as they did if they had known of the concealed and/or
16 suppressed facts. Plaintiffs' and the Class' actions were justified. Defendants were
17 in exclusive control of the material facts and such facts were not known to the public
18 or the Class.
19

20 1725. As a result of the misrepresentation concealment and/or suppression of
21 the facts, Plaintiffs and the Class sustained damage. For those Plaintiffs and the
22 Class who elect to affirm the sale, these damages, under Mississippi law, include the
23 difference between the actual value of that which Plaintiffs and the Class paid and
24 the actual value of that which they received, together with additional damages arising
25 from the sales transaction, amounts expended in reliance upon the fraud,
26 compensation for loss of use and enjoyment of the property, and/or lost profits. For
27 those Plaintiffs and the Class who want to rescind the purchase, then those Plaintiffs
28

1 and the Class are entitled to restitution and consequential damages under Mississippi
2 law.

3 1726. Defendants' acts were done maliciously, oppressively, deliberately, with
4 intent to defraud, and in reckless disregard of Plaintiffs' and the Class' rights and
5 well-being to enrich Defendants. Defendants' conduct warrants an assessment of
6 punitive damages in an amount sufficient to deter such conduct in the future, which
7 amount is to be determined according to proof.

9 **COUNT VI**

10 **UNJUST ENRICHMENT**

11 **(Based On Mississippi Law)**

12
13 1727. Plaintiffs reallege and incorporate by reference all paragraphs as though
14 fully set forth herein.

15 1728. As a result of their wrongful and fraudulent acts and omissions, as set
16 forth above, pertaining to the design defect of their vehicles and the concealment of
17 the defect, Defendants charged a higher price for their vehicles than the vehicles'
18 true value and Defendants obtained monies which rightfully belong to Plaintiffs.

19
20 1729. Defendants enjoyed the benefit of increased financial gains, to the
21 detriment of Plaintiffs and the Class, who paid a higher price for vehicles which
22 actually had lower values. It would be inequitable and unjust for Defendants to
23 retain these wrongfully obtained profits.

24 1730. Plaintiffs, therefore, seek an order establishing Defendants as
25 constructive trustees of the profits unjustly obtained, plus interest.
26
27
28

MISSOURI

COUNT I

VIOLATION OF MISSOURI MERCHANDISING PRACTICES ACT

(Mo. Rev. Stat. § 407.010, *et seq.*)

1731. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1732. The conduct of Toyota as set forth herein constitutes unfair or deceptive acts or practices, including, but not limited to, Toyota's manufacture and sale of vehicles with a sudden acceleration defect that lack brake-override or other effective fail-safe mechanisms, which Toyota failed to adequately investigate, disclose and remedy, and its misrepresentations and omissions regarding the safety and reliability of its vehicles.

1733. Toyota's actions as set forth above occurred in the conduct of trade or commerce.

1734. Toyota's actions impact the public interest because Plaintiffs were injured in exactly the same way as millions of others purchasing and/or leasing Toyota vehicles as a result of Toyota's generalized course of deception. All of the wrongful conduct alleged herein occurred, and continues to occur, in the conduct of Toyota's business.

1735. Plaintiffs and the Class were injured as a result of Defendant's conduct. Plaintiffs overpaid for their Defective Vehicles and did not receive the benefit of their bargain, and their vehicles have suffered a diminution in value.

1736. Toyota's conduct proximately caused the injuries to Plaintiffs and the Class.

1 1737. Toyota is liable to Plaintiffs and the Class for damages in amounts to be
2 proven at trial, including attorneys' fees, costs, and treble damages.

3 1738. Pursuant to MO. REV. STAT. § 407.010, Plaintiffs will serve the Missouri
4 Attorney General with a copy of this complaint as Plaintiffs seek injunctive relief.
5

6 **COUNT II**

7 **BREACH OF EXPRESS WARRANTY**

8 **(Mo. Rev. Stat. § 400.2-313)**

9 1739. Plaintiffs reallege and incorporate by reference all paragraphs as though
10 fully set forth herein.

11 1740. Toyota is and was at all relevant times a merchant with respect to motor
12 vehicles.
13

14 1741. In the course of selling its vehicles, Toyota expressly warranted in
15 writing that the Vehicles were covered by a Basic Warranty.

16 1742. Toyota breached the express warranty to repair and adjust to correct
17 defects in materials and workmanship of any part supplied by Toyota. Toyota has
18 not repaired or adjusted, and has been unable to repair or adjust, the Vehicles'
19 materials and workmanship defects.
20

21 1743. In addition to this Basic Warranty, Toyota expressly warranted several
22 attributes, characteristics and qualities, as set forth above.

23 1744. These warranties are only a sampling of the numerous warranties that
24 Toyota made relating to safety, reliability and operation, which are more fully
25 outlined in Section IV.A., *supra*. Generally these express warranties promise
26 heightened, superior, and state-of-the-art safety, reliability, performance standards,
27 and promote the benefits of ETCS. These warranties were made, *inter alia*, in
28

1 advertisements, in Toyota's "e brochures," and in uniform statements provided by
2 Toyota to be made by salespeople. These affirmations and promises were part of the
3 basis of the bargain between the parties.

4 1745. These additional warranties were also breached because the Defective
5 Vehicles were not fully operational, safe, or reliable (and remained so even after the
6 problems were acknowledged and a recall "fix" was announced), nor did they
7 comply with the warranties expressly made to purchasers or lessees. Toyota did not
8 provide at the time of sale, and has not provided since then, vehicles conforming to
9 these express warranties.
10

11 1746. Furthermore, the limited warranty of repair and/or adjustments to
12 defective parts, fails in its essential purpose because the contractual remedy is
13 insufficient to make the Plaintiffs and the Class whole and because the Defendants
14 have failed and/or have refused to adequately provide the promised remedies within
15 a reasonable time.
16

17 1747. Accordingly, recovery by the Plaintiffs is not limited to the limited
18 warranty of repair or adjustments to parts defective in materials or workmanship, and
19 Plaintiffs seek all remedies as allowed by law.
20

21 1748. Also, as alleged in more detail herein, at the time that Defendants
22 warranted and sold the vehicles they knew that the vehicles did not conform to the
23 warranties and were inherently defective, and Defendants wrongfully and
24 fraudulently misrepresented and/or concealed material facts regarding their vehicles.
25 Plaintiffs and the Class were therefore induced to purchase the vehicles under false
26 and/or fraudulent pretenses.
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1 1749. Moreover, many of the damages flowing from the Defective Vehicles
2 cannot be resolved through the limited remedy of “replacement or adjustments,” as
3 those incidental and consequential damages have already been suffered due to
4 Defendants’ fraudulent conduct as alleged herein, and due to their failure and/or
5 continued failure to provide such limited remedy within a reasonable time, and any
6 limitation on Plaintiffs’ and the Class’ remedies would be insufficient to make
7 Plaintiffs and the Class whole.
8

9 1750. Finally, due to the Defendants’ breach of warranties as set forth herein,
10 Plaintiffs and the Class assert as an additional and/or alternative remedy, as set forth
11 in MO. REV. STAT. § 400.2-608, for a revocation of acceptance of the goods, and for
12 a return to Plaintiffs and to the Class of the purchase price of all vehicles currently
13 owned.
14

15 1751. Toyota was provided notice of these issues by numerous complaints
16 filed against it, including the instant complaint, and by numerous individual letters
17 and communications sent by Plaintiffs and the Class before or within a reasonable
18 amount of time after Toyota issued the recall and the allegations of vehicle defects
19 became public.
20

21 1752. As a direct and proximate result of Toyota’s breach of express
22 warranties, Plaintiffs and the Class have been damaged in an amount to be
23 determined at trial.
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COUNT III

BREACH OF THE IMPLIED WARRANTY OF MERCHANTABILITY

(Mo. Rev. Stat. § 400.2-314)

1753. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1754. Toyota is and was at all relevant times a merchant with respect to motor vehicles.

1755. A warranty that the Defective Vehicles were in merchantable condition is implied by law in the instant transactions, pursuant to MO. REV. STAT. § 400.2-314.

1756. These vehicles, when sold and at all times thereafter, were not in merchantable condition and are not fit for the ordinary purpose for which cars are used. Specifically, the Defective Vehicles are inherently defective in that there are defects in the vehicle control systems that permit sudden unintended acceleration to occur; the Defective Vehicles do not have an adequate fail-safe to protect against such SUA events, nor do they have a brake-override; and the ETCS system was not adequately tested.

1757. Toyota was provided notice of these issues by numerous complaints filed against it, including the instant complaint, and by numerous individual letters and communications sent by Plaintiffs and the Class before or within a reasonable amount of time after Toyota issued the recall and the allegations of vehicle defects became public.

1758. Plaintiffs and the Class have had sufficient dealings with either the Defendants or their agents (dealerships) to establish privity of contract between

1 Plaintiffs and the Class. Notwithstanding this, privity is not required in this case
2 because Plaintiffs and the Class are intended third-party beneficiaries of contracts
3 between Toyota and its dealers; specifically, they are the intended beneficiaries of
4 Toyota's implied warranties. The dealers were not intended to be the ultimate
5 consumers of the Defective Vehicles and have no rights under the warranty
6 agreements provided with the Defective Vehicles; the warranty agreements were
7 designed for and intended to benefit the ultimate consumers only. Finally, privity is
8 also not required because Plaintiffs' and the Class' Toyotas are dangerous
9 instrumentalities due to the aforementioned defects and nonconformities.
10

11 1759. As a direct and proximate result of Toyota's breach of the warranties of
12 merchantability, Plaintiffs and the Class have been damaged in an amount to be
13 proven at trial.
14

15 **COUNT IV**
16 **REVOCATION OF ACCEPTANCE**
17 **(Mo. Rev. Stat. § 400.2-608)**

18 1760. Plaintiffs reallege and incorporate by reference all paragraphs as though
19 fully set forth herein.
20

21 1761. Plaintiffs identified above demanded revocation and the demands were
22 refused.

23 1762. Plaintiffs and the Class had no knowledge of such defects and
24 nonconformities, were unaware of these defects, and reasonably could not have
25 discovered them when they purchased or leased their automobiles from Toyota. On
26 the other hand, Toyota was aware of the defects and nonconformities at the time of
27 sale and thereafter.
28

1 1763. Acceptance was reasonably induced by the difficulty of discovery of the
2 defects and nonconformities before acceptance.

3 1764. There has been no change in the condition of Plaintiffs' vehicles not
4 caused by the defects and nonconformities.

5 1765. When Plaintiffs sought to revoke acceptance, Toyota refused to accept
6 return of the Defective Vehicles and to refund Plaintiffs' purchase price and monies
7 paid.
8

9 1766. Plaintiffs and the Class would suffer economic hardship if they returned
10 their vehicles but did not receive the return of all payments made by them. Because
11 Toyota is refusing to acknowledge any revocation of acceptance and return
12 immediately any payments made, Plaintiffs and the Class have not re-accepted their
13 Defective Vehicles by retaining them.
14

15 1767. These defects and nonconformities substantially impaired the value of
16 the Defective Vehicles to Plaintiffs and the Class. This impairment stems from two
17 basic sources. First, the Defective Vehicles fail in their essential purpose because
18 they present an unreasonably high risk of sudden unintended acceleration (a risk
19 acknowledged by Toyota's recall), rendering them unsafe in a very material way.
20 Second, the repair and adjust warranty has failed of its essential purpose because
21 Toyota cannot repair or adjust the Defective Vehicles.
22

23 1768. Plaintiffs and the Class provided notice of their intent to seek revocation
24 of acceptance by a class-action lawsuit seeking such relief. In addition, Plaintiffs
25 (and many Class members) have requested that Toyota accept return of their vehicles
26 and return all payments made. Plaintiffs on behalf of themselves and the Class
27 hereby demand revocation and tender their Defective Vehicles.
28

1 1769. Plaintiffs and the Class would suffer economic hardship if they returned
2 their vehicles but did not receive the return of all payments made by them. Because
3 Toyota is refusing to acknowledge any revocation of acceptance and return
4 immediately any payments made, Plaintiffs and the Class have not re-accepted their
5 Defective Vehicles by retaining them, as they must continue using them due to the
6 financial burden of securing alternative means of transport for an uncertain and
7 substantial period of time.

9 1770. Finally, due to the Defendants' breach of warranties as set forth herein,
10 Plaintiffs and the Class assert as an additional and/or alternative remedy, as set forth
11 in MO. REV. STAT. § 400.2-608, for a revocation of acceptance of the goods, and for
12 a return to Plaintiffs and to the Class of the purchase price of all vehicles currently
13 owned.

15 1771. Consequently, Plaintiffs and the Class are entitled to revoke their
16 acceptances, receive all payments made to Toyota, and to all incidental and
17 consequential damages, including the costs associated with purchasing safer vehicles,
18 and all other damages allowable under law, all in amounts to be proven at trial.

20 **COUNT V**

21 **BREACH OF CONTRACT/COMMON LAW WARRANTY**

22 **(Based On Missouri Law)**

23 1772. Plaintiffs reallege and incorporate by reference all paragraphs as though
24 fully set forth herein.

25 1773. To the extent Toyota's repair or adjust commitment is deemed not to be
26 a warranty under Missouri's Commercial Code, Plaintiffs plead in the alternative
27 under common law warranty and contract law. Toyota limited the remedies
28

1 available to Plaintiffs and the Class to just repairs and adjustments needed to correct
2 defects in materials or workmanship of any part supplied by Toyota, and/or
3 warranted the quality or nature of those services to Plaintiffs.

4 1774. Toyota breached this warranty or contract obligation by failing to repair
5 the Defective Vehicles evidencing a sudden unintended acceleration problem,
6 including those that were recalled, or to replace them.

7 1775. As a direct and proximate result of Defendants' breach of contract or
8 common law warranty, Plaintiffs and the Class have been damaged in an amount to
9 be proven at trial, which shall include, but is not limited to, all compensatory
10 damages, incidental and consequential damages, and other damages allowed by law.

11 **COUNT VI**

12 **FRAUD BY CONCEALMENT**

13 **(Based On Missouri Law)**

14 1776. Plaintiffs reallege and incorporate by reference all paragraphs as though
15 fully set forth herein.

16 1777. As set forth above, Defendants concealed and/or suppressed material
17 facts concerning the safety of their vehicles.

18 1778. Defendants had a duty to disclose these safety issues because they
19 consistently marketed their vehicles as safe and proclaimed that safety is one of
20 Toyota's highest corporate priorities. Once Defendants made representations to the
21 public about safety, Defendants were under a duty to disclose these omitted facts,
22 because where one does speak one must speak the whole truth and not conceal any
23 facts which materially qualify those facts stated. One who volunteers information
24 must be truthful, and the telling of a half-truth calculated to deceive is fraud.
25
26
27
28

1 1779. In addition, Defendants had a duty to disclose these omitted material
2 facts because they were known and/or accessible only to Defendants who have
3 superior knowledge and access to the facts, and Defendants knew they were not
4 known to or reasonably discoverable by Plaintiffs and the Class. These omitted facts
5 were material because they directly impact the safety of the Defective Vehicles.
6 Whether or not a vehicle accelerates only at the driver's command, and whether a
7 vehicle will stop or not upon application of the brake by the driver, are material
8 safety concerns. Defendants possessed exclusive knowledge of the defects rendering
9 Defective Vehicles inherently more dangerous and unreliable than similar vehicles.
10

11 1780. Defendants actively concealed and/or suppressed these material facts, in
12 whole or in part, with the intent to induce Plaintiffs and the Class to purchase
13 Defective Vehicles at a higher price for the vehicles, which did not match the
14 vehicles' true value.
15

16 1781. Defendants still have not made full and adequate disclosure and
17 continue to defraud Plaintiffs and the Class.
18

19 1782. Plaintiffs and the Class were unaware of these omitted material facts
20 and would not have acted as they did if they had known of the concealed and/or
21 suppressed facts. Plaintiffs' and the Class' actions were justified. Defendants were
22 in exclusive control of the material facts and such facts were not known to the public
23 or the Class.
24

25 1783. As a result of the concealment and/or suppression of the facts, Plaintiffs
26 and the Class sustained damage. For those Plaintiffs and the Class who elect to
27 affirm the sale, these damages, include the difference between the actual value of
28 that which Plaintiffs and the Class paid and the actual value of that which they

1 received, together with additional damages arising from the sales transaction,
2 amounts expended in reliance upon the fraud, compensation for loss of use and
3 enjoyment of the property, and/or lost profits. For those Plaintiffs and the Class who
4 want to rescind the purchase, then those Plaintiffs and the Class are entitled to
5 restitution and consequential damages.
6

7 1784. Defendants' acts were done maliciously, oppressively, deliberately, with
8 intent to defraud, and in reckless disregard of Plaintiffs' and the Class' rights and
9 well-being to enrich Defendants. Defendants' conduct warrants an assessment of
10 punitive damages in an amount sufficient to deter such conduct in the future, which
11 amount is to be determined according to proof.
12

13 **COUNT VII**

14 **UNJUST ENRICHMENT**

15 **(Based On Missouri Law)**

16 1785. Plaintiffs reallege and incorporate by reference all paragraphs as though
17 fully set forth herein.
18

19 1786. Toyota had knowledge of the safety defects in its vehicles, which it
20 failed to disclose to Plaintiffs and the Class.

21 1787. As a result of their wrongful and fraudulent acts and omissions, as set
22 forth above, pertaining to the design defect of their vehicles and the concealment of
23 the defect, Toyota charged a higher price for their vehicles than the vehicles' true
24 value and Toyota obtained monies which rightfully belong to Plaintiffs.
25

26 1788. Toyota appreciated, accepted and retained the non-gratuitous benefits
27 conferred by Plaintiffs and the Class, who without knowledge of the safety defects
28

1 paid a higher price for vehicles which actually had lower values. It would be
2 inequitable and unjust for Toyota to retain these wrongfully obtained profits.

3 1789. Plaintiffs, therefore, are entitled to restitution and seek an order
4 establishing Toyota as constructive trustees of the profits unjustly obtained, plus
5 interest.
6

7 **MONTANA**

8 **COUNT I**

9 **BREACH OF EXPRESS WARRANTY**

10 **(Mont. Code § 30-2-313)**

11 1790. Plaintiffs reallege and incorporate by reference all paragraphs as though
12 fully set forth herein.
13

14 1791. Toyota is and was at all relevant times a merchant with respect to motor
15 vehicles under MONT. CODE. ANN. § 30-2-104.

16 1792. In the course of selling its vehicles, Toyota expressly warranted in
17 writing that the Vehicles were covered by a Basic Warranty.

18 1793. Toyota breached the express warranty to repair and adjust to correct
19 defects in materials and workmanship of any part supplied by Toyota. Toyota has
20 not repaired or adjusted, and has been unable to repair or adjust, the Vehicles'
21 materials and workmanship defects.
22

23 1794. In addition to this Basic Warranty, Toyota expressly warranted several
24 attributes, characteristics and qualities, as set forth above.

25 1795. These warranties are only a sampling of the numerous warranties that
26 Toyota made relating to safety, reliability and operation, which are more fully
27 outlined in Section IV.A., *supra*. Generally these express warranties promise
28

1 heightened, superior, and state-of-the-art safety, reliability, performance standards,
2 and promote the benefits of ETCS. These warranties were made, *inter alia*, in
3 advertisements, in Toyota's "e-brochures," and in uniform statements provided by
4 Toyota to be made by salespeople. These affirmations and promises were part of the
5 basis of the bargain between the parties.
6

7 1796. These additional warranties were also breached because the Defective
8 Vehicles were not fully operational, safe, or reliable (and remained so even after the
9 problems were acknowledged and a recall "fix" was announced), nor did they
10 comply with the warranties expressly made to purchasers or lessees. Toyota did not
11 provide at the time of sale, and has not provided since then, vehicles conforming to
12 these express warranties.
13

14 1797. Furthermore, the limited warranty of repair and/or adjustments to
15 defective parts, fails in its essential purpose because the contractual remedy is
16 insufficient to make the Plaintiffs and the Class whole and because the Defendants
17 have failed and/or have refused to adequately provide the promised remedies within
18 a reasonable time.
19

20 1798. Accordingly, recovery by the Plaintiffs is not limited to the limited
21 warranty of repair or adjustments to parts defective in materials or workmanship, and
22 Plaintiffs seek all remedies as allowed by law.

23 1799. Also, as alleged in more detail herein, at the time that Defendants
24 warranted and sold the vehicles they knew that the vehicles did not conform to the
25 warranties and were inherently defective, and Defendants wrongfully and
26 fraudulently misrepresented and/or concealed material facts regarding their vehicles.
27 Plaintiffs and the Class were therefore induced to purchase the vehicles under false
28

1 and/or fraudulent pretenses. The enforcement under these circumstances of any
2 limitations whatsoever precluding the recovery of incidental and/or consequential
3 damages is unenforceable pursuant to MONT. CODE ANN. § 30-2-302.

4 1800. Moreover, many of the damages flowing from the Defective Vehicles
5 cannot be resolved through the limited remedy of “replacement or adjustments,” as
6 those incidental and consequential damages have already been suffered due to
7 Defendants’ fraudulent conduct as alleged herein, and due to their failure and/or
8 continued failure to provide such limited remedy within a reasonable time, and any
9 limitation on Plaintiffs’ and the Class’ remedies would be insufficient to make
10 Plaintiffs and the Class whole.
11

12 1801. Finally, due to the Defendants’ breach of warranties as set forth herein,
13 Plaintiffs and the Class assert as an additional and/or alternative remedy, as set forth
14 in MONT. CODE § 30-2-711, for a revocation of acceptance of the goods, and for a
15 return to Plaintiffs and to the Class of the purchase price of all vehicles currently
16 owned and for such other incidental and consequential damages as allowed under
17 MONT. CODE §§ 30-2-711 and 30-2-608.
18

19 1802. Toyota was provided notice of these issues by numerous complaints
20 filed against it, including the instant complaint, and by numerous individual letters
21 and communications sent by Plaintiffs and the Class before or within a reasonable
22 amount of time after Toyota issued the recall and the allegations of vehicle defects
23 became public.
24

25 1803. As a direct and proximate result of Toyota’s breach of express
26 warranties, Plaintiffs and the Class have been damaged in an amount to be
27 determined at trial.
28

COUNT II

BREACH OF THE IMPLIED WARRANTY OF MERCHANTABILITY

(Mont. Code § 30-2-314)

1804. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1805. Toyota is and was at all relevant times a merchant with respect to motor vehicles under MONT. CODE § 30-2-104.

1806. A warranty that the Defective Vehicles were in merchantable condition was implied by law in the instant transaction, pursuant to MONT. CODE § 30-2-314.

1807. These vehicles, when sold and at all times thereafter, were not in merchantable condition and are not fit for the ordinary purpose for which cars are used. Specifically, the Defective Vehicles are inherently defective in that there are defects in the vehicle control systems that permit sudden unintended acceleration to occur; the Defective Vehicles do not have an adequate fail-safe to protect against such SUA events, nor do they have a brake-override; and the ETCS system was not adequately tested.

1808. Toyota was provided notice of these issues by numerous complaints filed against it, including the instant complaint, and by numerous individual letters and communications sent by Plaintiffs and the Class before or within a reasonable amount of time after Toyota issued the recall and the allegations of vehicle defects became public.

1809. As a direct and proximate result of Toyota's breach of the warranties of merchantability, Plaintiffs and the Class have been damaged in an amount to be proven at trial.

COUNT III

REVOCATION OF ACCEPTANCE

(Mont. Code § 30-2-608)

1810. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1811. Plaintiffs identified above demanded revocation and the demands were refused.

1812. Plaintiffs and the Class had no knowledge of such defects and nonconformities, were unaware of these defects, and reasonably could not have discovered them when they purchased or leased their automobiles from Toyota. On the other hand, Toyota was aware of the defects and nonconformities at the time of sale and thereafter.

1813. Acceptance was reasonably induced by the difficulty of discovery of the defects and nonconformities before acceptance.

1814. There has been no change in the condition of Plaintiffs' vehicles not caused by the defects and nonconformities.

1815. When Plaintiffs sought to revoke acceptance, Toyota refused to accept return of the Defective Vehicles and to refund Plaintiffs' purchase price and monies paid.

1816. Plaintiffs and the Class would suffer economic hardship if they returned their vehicles but did not receive the return of all payments made by them. Because Toyota is refusing to acknowledge any revocation of acceptance and return immediately any payments made, Plaintiffs and the Class have not re-accepted their Defective Vehicles by retaining them.

1 1817. These defects and nonconformities substantially impaired the value of
2 the Defective Vehicles to Plaintiffs and the Class. This impairment stems from two
3 basic sources. First, the Defective Vehicles fail in their essential purpose because
4 they present an unreasonably high risk of sudden unintended acceleration (a risk
5 acknowledged by Toyota's recall), rendering them unsafe in a very material way.
6 Second, the repair and adjust warranty has failed of its essential purpose because
7 Toyota cannot repair or adjust the Defective Vehicles.
8

9 1818. Plaintiffs and the Class provided notice of their intent to seek revocation
10 of acceptance by a class-action lawsuit seeking such relief. In addition, Plaintiffs
11 (and many Class members) have requested that Toyota accept return of their vehicles
12 and return all payments made. Plaintiffs on behalf of themselves and the Class
13 hereby demand revocation and tender their Defective Vehicles.
14

15 1819. Plaintiffs and the Class would suffer economic hardship if they returned
16 their vehicles but did not receive the return of all payments made by them. Because
17 Toyota is refusing to acknowledge any revocation of acceptance and return
18 immediately any payments made, Plaintiffs and the Class have not re-accepted their
19 Defective Vehicles by retaining them, as they must continue using them due to the
20 financial burden of securing alternative means of transport for an uncertain and
21 substantial period of time.
22

23 1820. Finally, due to the Defendants' breach of warranties as set forth herein,
24 Plaintiffs and the Class assert as an additional and/or alternative remedy, as set forth
25 in MONT. CODE § 30-2-711, for a revocation of acceptance of the goods, and for a
26 return to Plaintiffs and to the Class of the purchase price of all vehicles currently
27
28

1 owned and for such other incidental and consequential damages as allowed under
2 MONT. CODE § 30-2-711.

3 1821. Consequently, Plaintiffs and the Class are entitled to revoke their
4 acceptances, receive all payments made to Toyota, and to all incidental and
5 consequential damages, including the costs associated with purchasing safer vehicles,
6 and all other damages allowable under law, all in amounts to be proven at trial.
7

8 **COUNT IV**

9 **BREACH OF CONTRACT/COMMON LAW WARRANTY**

10 **(Based On Montana Law)**

11 1822. Plaintiffs reallege and incorporate by reference all paragraphs as though
12 fully set forth herein.
13

14 1823. To the extent Toyota's repair or adjust commitment is deemed not to be
15 a warranty under Montana's Commercial Code, Plaintiffs plead in the alternative
16 under common law warranty and contract law. Toyota limited the remedies
17 available to Plaintiffs and the Class to just repairs and adjustments needed to correct
18 defects in materials or workmanship of any part supplied by Toyota, and/or
19 warranted the quality or nature of those services to Plaintiffs.
20

21 1824. Toyota breached this warranty or contract obligation by failing to repair
22 the Defective Vehicles evidencing a sudden unintended acceleration problem,
23 including those that were recalled, or to replace them.

24 1825. As a direct and proximate result of Defendants' breach of contract or
25 common law warranty, Plaintiffs and the Class have been damaged in an amount to
26 be proven at trial, which shall include, but is not limited to, all compensatory
27 damages, incidental and consequential damages, and other damages allowed by law.
28

COUNT V

FRAUD BY CONCEALMENT

(Based On Montana Law)

1826. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1827. As set forth above, Defendants concealed and/or suppressed material facts concerning the safety of their vehicles.

1828. Defendants had a duty to disclose these safety issues because they consistently marketed their vehicles as safe and proclaimed that safety is one of Toyota's highest corporate priorities. Once Defendants made representations to the public about safety, Defendants were under a duty to disclose these omitted facts, because where one does speak one must speak the whole truth and not conceal any facts which materially qualify those facts stated. One who volunteers information must be truthful, and the telling of a half-truth calculated to deceive is fraud.

1829. In addition, Defendants had a duty to disclose these omitted material facts because they were known and/or accessible only to Defendants who have superior knowledge and access to the facts, and Defendants knew they were not known to or reasonably discoverable by Plaintiffs and the Class. These omitted facts were material because they directly impact the safety of the Defective Vehicles. Whether or not a vehicle accelerates only at the driver's command, and whether a vehicle will stop or not upon application of the brake by the driver, are material safety concerns. Defendants possessed exclusive knowledge of the defects rendering Defective Vehicles inherently more dangerous and unreliable than similar vehicles.

1 1830. Defendants actively concealed and/or suppressed these material facts, in
2 whole or in part, with the intent to induce Plaintiffs and the Class to purchase
3 Defective Vehicles at a higher price for the vehicles, which did not match the
4 vehicles' true value.

5
6 1831. Defendants still have not made full and adequate disclosure and
7 continue to defraud Plaintiffs and the Class.

8 1832. Plaintiffs and the Class were unaware of these omitted material facts
9 and would not have acted as they did if they had known of the concealed and/or
10 suppressed facts. Plaintiffs' and the Class' actions were justified. Defendants were
11 in exclusive control of the material facts and such facts were not known to the public
12 or the Class.

13
14 1833. As a result of the concealment and/or suppression of the facts, Plaintiffs
15 and the Class sustained damage.

16 1834. Defendants' acts were done maliciously, oppressively, deliberately, with
17 intent to defraud, and in reckless disregard of Plaintiffs' and the Class' rights and
18 well-being to enrich Defendants. Defendants' conduct warrants an assessment of
19 punitive damages in an amount sufficient to deter such conduct in the future, which
20 amount is to be determined according to proof.

21
22 **COUNT VI**

23 **UNJUST ENRICHMENT**

24 **(Based On Montana Law)**

25 1835. Plaintiffs reallege and incorporate by reference all paragraphs as though
26 fully set forth herein.
27
28

1 1836. As a result of their wrongful and fraudulent acts and omissions, as set
2 forth above, pertaining to the design defect of their vehicles and the concealment of
3 the defect, Defendants charged a higher price for their vehicles than the vehicles'
4 true value and Defendants obtained monies which rightfully belong to Plaintiffs.
5

6 1837. Defendants enjoyed the benefit of increased financial gains, to the
7 detriment of Plaintiffs and the Class, who paid a higher price for vehicles which
8 actually had lower values. It would be inequitable and unjust for Defendants to
9 retain these wrongfully obtained profits.

10 1838. Plaintiffs, therefore, seek an order establishing Defendants as
11 constructive trustees of the profits unjustly obtained, plus interest.
12

13 **NEBRASKA**

14 **COUNT I**

15 **VIOLATION OF THE NEBRASKA CONSUMER PROTECTION ACT**

16 **(Neb. Rev. Stat. § 59-1601, *et seq.*)**

17 1839. Plaintiffs reallege and incorporate by reference all paragraphs as though
18 fully set forth herein.
19

20 1840. The Nebraska Consumer Protection Act ("NCPA") prohibits "unfair or
21 deceptive acts or practices in the conduct of any trade or commerce."

22 1841. "Trade or commerce" means "the sale of assets or services and any
23 commerce directly or indirectly affecting the people of the State of Nebraska."
24

25 1842. The conduct of Toyota as set forth herein constitutes unfair or deceptive
26 acts or practices, including, but not limited to, Toyota's manufacture and sale of
27 vehicles with a sudden acceleration defect that lack brake-override or other effective
28 fail-safe mechanisms, which Toyota failed to adequately investigate, disclose and

1 remedy, and its misrepresentations and omissions regarding the safety and reliability
2 of its vehicles, which misrepresentations and omissions possessed the tendency or
3 capacity to mislead.

4 1843. Toyota's actions as set forth above occurred in the conduct of trade or
5 commerce.

6
7 1844. Toyota's actions impact the public interest because Plaintiffs were
8 injured in exactly the same way as millions of others purchasing and/or leasing
9 Toyota vehicles as a result of Toyota's generalized course of deception. All of the
10 wrongful conduct alleged herein occurred, and continues to occur, in the conduct of
11 Toyota's business.

12
13 1845. Plaintiffs and the Class were injured as a result of Defendants' conduct.
14 Plaintiffs overpaid for their Defective Vehicles and did not receive the benefit of
15 their bargain, and their vehicles have suffered a diminution in value.

16 1846. Toyota's conduct proximately caused the injuries to Plaintiffs and the
17 Class, who are entitled to recover actual damages, as well as enhanced damages
18 pursuant to § 59-1609.

19
20 **COUNT II**

21 **BREACH OF THE IMPLIED WARRANTY OF MERCHANTABILITY**

22 **(Neb. Rev. Stat. Neb. § 2-314)**

23 1847. Plaintiffs reallege and incorporate by reference all paragraphs as though
24 fully set forth herein.

25 1848. Toyota is and was at all relevant times a merchant with respect to motor
26 vehicles.
27
28

1 1849. A warranty that the Defective Vehicles were in merchantable condition
2 is implied by law in the instant transactions.

3 1850. These vehicles, when sold and at all times thereafter, were not in
4 merchantable condition and are not fit for the ordinary purpose for which cars are
5 used. Specifically, the Defective Vehicles are inherently defective in that there are
6 defects in the vehicle control systems that permit sudden unintended acceleration to
7 occur; the Defective Vehicles do not have an adequate fail-safe to protect against
8 such SUA events, nor do they have a brake-override; and the ETCS system was not
9 adequately tested.
10

11 1851. Toyota was provided notice of these issues by numerous complaints
12 filed against it, including the instant complaint, and by numerous individual letters
13 and communications sent by Plaintiffs and the Class before or within a reasonable
14 amount of time after Toyota issued the recall and the allegations of vehicle defects
15 became public.
16

17 1852. As a direct and proximate result of Toyota's breach of the warranties of
18 merchantability, Plaintiffs and the Class have been damaged in an amount to be
19 proven at trial.
20

21 **COUNT III**

22 **REVOCATION OF ACCEPTANCE**

23 **(Nev. Rev. Stat. NEB. § 2-608)**

24 1853. Plaintiffs reallege and incorporate by reference all paragraphs as though
25 fully set forth herein.
26

27 1854. Plaintiffs identified above demanded revocation and the demands were
28 refused.

1 1855. Plaintiffs and the Class had no knowledge of such defects and
2 nonconformities, were unaware of these defects, and reasonably could not have
3 discovered them when they purchased or leased their automobiles from Toyota. On
4 the other hand, Toyota was aware of the defects and nonconformities at the time of
5 sale and thereafter.
6

7 1856. Acceptance was reasonably induced by the difficulty of discovery of the
8 defects and nonconformities before acceptance.

9 1857. There has been no change in the condition of Plaintiffs' vehicles not
10 caused by the defects and nonconformities.

11 1858. When Plaintiffs sought to revoke acceptance, Toyota refused to accept
12 return of the Defective Vehicles and to refund Plaintiffs' purchase price and monies
13 paid.
14

15 1859. Plaintiffs and the Class would suffer economic hardship if they returned
16 their vehicles but did not receive the return of all payments made by them. Because
17 Toyota is refusing to acknowledge any revocation of acceptance and return
18 immediately any payments made, Plaintiffs and the Class have not re-accepted their
19 Defective Vehicles by retaining them.
20

21 1860. These defects and nonconformities substantially impaired the value of
22 the Defective Vehicles to Plaintiffs and the Class. This impairment stems from two
23 basic sources. First, the Defective Vehicles fail in their essential purpose because
24 they present an unreasonably high risk of sudden unintended acceleration (a risk
25 acknowledged by Toyota's recall), rendering them unsafe in a very material way.
26 Second, the repair and adjust warranty has failed of its essential purpose because
27 Toyota cannot repair or adjust the Defective Vehicles.
28

1 1861. Plaintiffs and the Class provided notice of their intent to seek revocation
2 of acceptance by a class-action lawsuit seeking such relief. In addition, Plaintiffs
3 (and many Class members) have requested that Toyota accept return of their vehicles
4 and return all payments made. Plaintiffs on behalf of themselves and the Class
5 hereby demand revocation and tender their Defective Vehicles.
6

7 1862. Plaintiffs and the Class would suffer economic hardship if they returned
8 their vehicles but did not receive the return of all payments made by them. Because
9 Toyota is refusing to acknowledge any revocation of acceptance and return
10 immediately any payments made, Plaintiffs and the Class have not re-accepted their
11 Defective Vehicles by retaining them, as they must continue using them due to the
12 financial burden of securing alternative means of transport for an uncertain and
13 substantial period of time.
14

15 1863. Finally, due to the Defendants' breach of warranties as set forth herein,
16 Plaintiffs and the Class assert as an additional and/or alternative remedy, as set forth
17 in R.R.S. Neb. § 2-608, for a revocation of acceptance of the goods, and for a return
18 to Plaintiffs and to the Class of the purchase price of all vehicles currently owned.
19

20 1864. Consequently, Plaintiffs and the Class are entitled to revoke their
21 acceptances, receive all payments made to Toyota, and to all incidental and
22 consequential damages, including the costs associated with purchasing safer vehicles,
23 and all other damages allowable under law, all in amounts to be proven at trial.
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28

COUNT IV

IN THE ALTERNATIVE, UNJUST ENRICHMENT

(Based On Nebraska Law)

1865. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1866. Toyota had knowledge of the safety defects in its vehicles, which it failed to disclose to Plaintiffs and the Class.

1867. As a result of their wrongful and fraudulent acts and omissions, as set forth above, pertaining to the design defect of their vehicles and the concealment of the defect, Toyota charged a higher price for their vehicles than the vehicles' true value and Toyota obtained monies which rightfully belong to Plaintiffs.

1868. Toyota received and retained benefits conferred by Plaintiffs and the Class, who without knowledge of the safety defects paid a higher price for vehicles which actually had lower values. It would be inequitable and unconscionable for Toyota to retain these wrongfully obtained profits.

1869. Plaintiffs, therefore, are entitled to restitution and seek an order establishing Toyota as constructive trustees of the profits unjustly obtained, plus interest.

NEVADA

COUNT I

VIOLATION OF THE NEVADA DECEPTIVE TRADE PRACTICES ACT

(Nev. Rev. Stat. § 598.0903, *et seq.*)

1870. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1 1871. Toyota is a “person” as required under the statute.

2 1872. Toyota’s actions as set forth above occurred in the course of business.

3 1873. The Nevada Deceptive Trade Practices Act, NEV. REV. STAT.

4 § 598.0903, *et seq.*, prohibits unfair or deceptive consumer sales practices.

5
6 1874. The NEV. REV. STAT. § 598.0915 provides that a person engages in a
7 “deceptive trade practice” if, in the course of his or her business or occupation, he or
8 she does any of the following, including: “5. Knowingly makes a false
9 representation as to the characteristics, ingredients, uses, benefits, alterations or
10 quantities of goods or services for sale or lease or a false representation as to the
11 sponsorship, approval, status, affiliation or connection of a person therewith”; “7.
12 Represents that goods or services for sale or lease are of a particular standard, quality
13 or grade, or that such goods are of a particular style or model, if he or she knows or
14 should know that they are of another standard, quality, grade, style or model”; “9.
15 Advertises goods or services with intent not to sell or lease them as advertised”; or
16 “15. Knowingly makes any other false representation in a transaction.”
17

18 1875. In the course of Toyota’s business, it willfully failed to disclose and
19 actively concealed the dangerous risk of throttle control failure and the lack of
20 adequate fail-safe mechanisms in Defective Vehicles equipped with ETCS as
21 described above. Accordingly, Toyota engaged in deceptive trade practices,
22 including making false representation as to the characteristics, uses, and benefits of
23 the Defective Vehicles; representing that Defective Vehicles are of a particular
24 standard and quality when they are not; advertising Defective Vehicles with the
25 intent not to sell them as advertised; and knowingly made numerous other false
26 representations as further described during the fact section of this complaint.
27
28

1 1876. Toyota knowingly made false representations to consumers with the
2 intent to induce consumers into purchasing Toyota vehicles. Plaintiffs reasonably
3 relied on false representations by Toyota and were induced to each purchase a
4 Toyota vehicle, to his/her detriment. As a result of these unlawful trade practices,
5 Plaintiffs have suffered ascertainable loss.
6

7 1877. Plaintiffs and the Class suffered ascertainable loss caused by Toyota's
8 false representations and failure to disclose material information. Plaintiffs and the
9 Class overpaid for their vehicles and did not receive the benefit of their bargain. The
10 value of their Toyota's has diminished now that the safety issues have come to light,
11 and Plaintiffs and the Class own vehicles that are not safe.
12

13 **COUNT II**

14 **BREACH OF EXPRESS WARRANTY**

15 **(Nev. Rev. Stat. § 104.2313)**

16 1878. Plaintiffs reallege and incorporate by reference all paragraphs as though
17 fully set forth herein.

18 1879. Toyota is and was at all relevant times a merchant with respect to motor
19 vehicles under the Uniform Commercial Code.
20

21 1880. In the course of selling its vehicles, Toyota expressly warranted in
22 writing that the Vehicles were covered by a Basic Warranty.

23 1881. Toyota breached the express warranty to repair and adjust to correct
24 defects in materials and workmanship of any part supplied by Toyota. Toyota has
25 not repaired or adjusted, and has been unable to repair or adjust, the Vehicles'
26 materials and workmanship defects.
27
28

1 1882. In addition to this Basic Warranty, Toyota expressly warranted several
2 attributes, characteristics and qualities, as set forth above.

3 1883. These warranties are only a sampling of the numerous warranties that
4 Toyota made relating to safety, reliability and operation, which are more fully
5 outlined in Section IV.A., *supra*. Generally these express warranties promise
6 heightened, superior, and state-of-the-art safety, reliability, performance standards,
7 and promote the benefits of ETCS. These warranties were made, *inter alia*, in
8 advertisements, in Toyota's "e brochures," and in uniform statements provided by
9 Toyota to be made by salespeople. These affirmations and promises were part of the
10 basis of the bargain between the parties.
11

12 1884. These additional warranties were also breached because the Defective
13 Vehicles were not fully operational, safe, or reliable (and remained so even after the
14 problems were acknowledged and a recall "fix" was announced), nor did they
15 comply with the warranties expressly made to purchasers or lessees. Toyota did not
16 provide at the time of sale, and has not provided since then, vehicles conforming to
17 these express warranties.
18

19 1885. Furthermore, the limited warranty of repair and/or adjustments to
20 defective parts, fails in its essential purpose because the contractual remedy is
21 insufficient to make the Plaintiffs and the Class whole and because the Defendants
22 have failed and/or have refused to adequately provide the promised remedies within
23 a reasonable time.
24

25 1886. Accordingly, recovery by the Plaintiffs is not limited to the limited
26 warranty of repair or adjustments to parts defective in materials or workmanship, and
27 Plaintiffs seek all remedies as allowed by law.
28

1 1887. Also, as alleged in more detail herein, at the time that Defendants
2 warranted and sold the vehicles they knew that the vehicles did not conform to the
3 warranties and were inherently defective, and Defendants wrongfully and
4 fraudulently misrepresented and/or concealed material facts regarding their vehicles.
5 Plaintiffs and the Class were therefore induced to purchase the vehicles under false
6 and/or fraudulent pretenses.
7

8 1888. Moreover, many of the damages flowing from the Defective Vehicles
9 cannot be resolved through the limited remedy of “replacement or adjustments,” as
10 those incidental and consequential damages have already been suffered due to
11 Defendants’ fraudulent conduct as alleged herein, and due to their failure and/or
12 continued failure to provide such limited remedy within a reasonable time, and any
13 limitation on Plaintiffs’ and the Class’ remedies would be insufficient to make
14 Plaintiffs and the Class whole.
15

16 1889. Toyota was provided notice of these issues by numerous complaints
17 filed against it, including the instant complaint, and by numerous individual letters
18 and communications sent by Plaintiffs and the Class before or within a reasonable
19 amount of time after Toyota issued the recall and the allegations of vehicle defects
20 became public.
21

22 1890. As a direct and proximate result of Toyota’s breach of express
23 warranties, Plaintiffs and the Class have been damaged in an amount to be
24 determined at trial.
25
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28

COUNT III

BREACH OF THE IMPLIED WARRANTY OF MERCHANTABILITY

(Nev. Rev. Stat. § 104.2314)

1891. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1892. Toyota is and was at all relevant times a merchant with respect to motor vehicles under the Uniform Commercial Code.

1893. A warranty that the Defective Vehicles were in merchantable condition was implied by law in the instant transaction, pursuant to the Uniform Commercial Code.

1894. These vehicles, when sold and at all times thereafter, were not in merchantable condition and are not fit for the ordinary purpose for which cars are used. Specifically, the Defective Vehicles are inherently defective in that there are defects in the vehicle control systems that permit sudden unintended acceleration to occur; the Defective Vehicles do not have an adequate fail-safe to protect against such SUA events, nor do they have a brake-override; and the ETCS system was not adequately tested.

1895. Toyota was provided notice of these issues by numerous complaints filed against it, including the instant complaint, and by numerous individual letters and communications sent by Plaintiffs and the Class before or within a reasonable amount of time after Toyota issued the recall and the allegations of vehicle defects became public.

1 1896. As a direct and proximate result of Toyota's breach of the warranties of
2 merchantability, Plaintiffs and the Class have been damaged in an amount to be
3 proven at trial.

4
5 **COUNT IV**
6 **REVOCATION OF ACCEPTANCE**
7 **(Nev. Rev. Stat. § 104.2608)**

8 1897. Plaintiffs reallege and incorporate by reference all paragraphs as though
9 fully set forth herein.

10 1898. Plaintiffs identified above demanded revocation and the demands were
11 refused.

12 1899. Plaintiffs and the Class had no knowledge of such defects and
13 nonconformities, were unaware of these defects, and reasonably could not have
14 discovered them when they purchased or leased their automobiles from Toyota. On
15 the other hand, Toyota was aware of the defects and nonconformities at the time of
16 sale and thereafter.

17 1900. Acceptance was reasonably induced by the difficulty of discovery of the
18 defects and nonconformities before acceptance.

19 1901. There has been no change in the condition of Plaintiffs' vehicles not
20 caused by the defects and nonconformities.

21 1902. When Plaintiffs sought to revoke acceptance, Toyota refused to accept
22 return of the Defective Vehicles and to refund Plaintiffs' purchase price and monies
23 paid.

24 1903. Plaintiffs and the Class would suffer economic hardship if they returned
25 their vehicles but did not receive the return of all payments made by them. Because
26
27
28

1 Toyota is refusing to acknowledge any revocation of acceptance and return
2 immediately any payments made, Plaintiffs and the Class have not re-accepted their
3 Defective Vehicles by retaining them.

4 1904. These defects and nonconformities substantially impaired the value of
5 the Defective Vehicles to Plaintiffs and the Class. This impairment stems from two
6 basic sources. First, the Defective Vehicles fail in their essential purpose because
7 they present an unreasonably high risk of sudden unintended acceleration (a risk
8 acknowledged by Toyota's recall), rendering them unsafe in a very material way.
9 Second, the repair and adjust warranty has failed of its essential purpose because
10 Toyota cannot repair or adjust the Defective Vehicles.

11 1905. Plaintiffs and the Class, within a reasonable amount of time, provided
12 notice of their intent to seek revocation of acceptance by a class-action lawsuit
13 seeking such relief. In addition, Plaintiffs (and many Class members) have requested
14 that Toyota accept return of their vehicles and return all payments made. Plaintiffs
15 on behalf of themselves and the Class hereby demand revocation and tender their
16 Defective Vehicles.

17 1906. Plaintiffs and the Class would suffer economic hardship if they returned
18 their vehicles but did not receive the return of all payments made by them. Because
19 Toyota is refusing to acknowledge any revocation of acceptance and return
20 immediately any payments made, Plaintiffs and the Class have not re-accepted their
21 Defective Vehicles by retaining them, as they must continue using them due to the
22 financial burden of securing alternative means of transport for an uncertain and
23 substantial period of time.

COUNT VI

**BREACH OF IMPLIED COVENANT OF GOOD FAITH
AND FAIR DEALING**

(Based On Nevada Law)

1912. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1913. As set forth above, Plaintiffs and the Class have entered into individual sales transactions and agreements with Toyota for the purchase Toyota vehicles.

1914. Plaintiffs and the Class have fully performed their obligations with Toyota under such transactions and agreements.

1915. At all times, Toyota owed Plaintiffs and the Class a duty to exercise and act in good faith and deal fairly with them in the performance of repairs of Defective Vehicles.

1916. Toyota has breached these duties and obligations in the manner and particulars set forth above, including, but not limited to, failing to repair the Defective Vehicles evidencing a sudden unintended acceleration problem, including those that were recalled, or to replace them.

1917. As a direct and proximate result of Defendants' failure to abide and comply with their obligations and duties, Plaintiffs and the Class have suffered pecuniary damages in an amount that has not yet been determined.

COUNT VII
FRAUD BY CONCEALMENT
(Based On Nevada Law)

1918. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1919. As set forth above, Defendants concealed and/or suppressed material facts concerning the safety of their vehicles.

1920. Defendants had a duty to disclose these safety issues because they consistently marketed their vehicles as safe and proclaimed that safety is one of Toyota's highest corporate priorities. Once Defendants made representations to the public about safety, Defendants were under a duty to disclose these omitted facts, because where one does speak one must speak the whole truth and not conceal any facts which materially qualify those facts stated. One who volunteers information must be truthful, and the telling of a half-truth calculated to deceive is fraud.

1921. In addition, Defendants had a duty to disclose these omitted material facts because they were known and/or accessible only to Defendants who have superior knowledge and access to the facts, and Defendants knew they were not known to or reasonably discoverable by Plaintiffs and the Class. These omitted facts were material because they directly impact the safety of the Defective Vehicles. Whether or not a vehicle accelerates only at the driver's command, and whether a vehicle will stop or not upon application of the brake by the driver, are material safety concerns. Defendants possessed exclusive knowledge of the defects rendering Defective Vehicles inherently more dangerous and unreliable than similar vehicles.

1 1922. Defendants actively concealed and/or suppressed these material facts, in
2 whole or in part, with the intent to induce Plaintiffs and the Class to purchase
3 Defective Vehicles at a higher price for the vehicles, which did not match the
4 vehicles' true value.

5 1923. Defendants still have not made full and adequate disclosure and
6 continue to defraud Plaintiffs and the Class.
7

8 1924. Plaintiffs and the Class were unaware of these omitted material facts
9 and would not have acted as they did if they had known of the concealed and/or
10 suppressed facts. Plaintiffs' and the Class' actions were justified. Defendants were
11 in exclusive control of the material facts and such facts were not known to the public
12 or the Class.
13

14 1925. Plaintiffs and the Class would not have purchased the vehicles sold by
15 Defendants or would have not paid as much for the vehicles purchased by
16 Defendants had they known the full truth about the vehicles being sold by
17 Defendants.
18

19 1926. As a result of the concealment and/or suppression of the facts, Plaintiffs
20 and the Class sustained damage.

21 1927. Defendants' acts were done maliciously, oppressively, deliberately, with
22 intent to defraud, and in reckless disregard of Plaintiffs' and the Class' rights and
23 well-being to enrich Defendants. Defendants' conduct warrants an assessment of
24 punitive damages in an amount sufficient to deter such conduct in the future, which
25 amount is to be determined according to proof.
26
27
28

COUNT VIII

UNJUST ENRICHMENT

(Based On Nevada Law)

1928. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1929. As a result of their wrongful and fraudulent acts and omissions, as set forth above, pertaining to the design defect of their vehicles and the concealment of the defect, Defendants charged a higher price for their vehicles than the vehicles' true value and Defendants obtained monies which rightfully belong to Plaintiffs.

1930. Defendants enjoyed the benefit of increased financial gains, to the detriment of Plaintiffs and the Class, who paid a higher price for vehicles which actually had lower values. It would be inequitable and unjust for Defendants to retain these wrongfully obtained profits.

1931. Plaintiffs, therefore, seek an order establishing Defendants as constructive trustees of the profits unjustly obtained, plus interest.

NEW HAMPSHIRE

COUNT I

VIOLATION OF N.H. CONSUMER PROTECTION ACT

(N.H. Rev. Stat. Ann. § 358A:1, *et seq.*)

1932. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1933. The New Hampshire Consumer Protection Act ("CPA") prohibits a person, in the conduct of any trade or commerce, from doing any of the following:
“(V) Representing that goods or services have ... characteristics, ... uses, benefits, or

1 quantities that they do not have; ... (VII) Representing that goods or services are of a
2 particular standard, quality, or grade, ... if they are of another; ... and
3 (IX) Advertising goods or services with intent not to sell them as advertised.” N.H.
4 REV. STAT. § 358-A:2.

5
6 1934. Toyota is a person within the meaning of the CPA. *See* N.H. REV.
7 STAT. § 358A:1(I).

8 1935. In the course of Toyota’s business, it willfully failed to disclose and
9 actively concealed the dangerous risk of throttle control failure and the lack of
10 adequate fail-safe mechanisms in Defective Vehicles equipped with ETCS as
11 described above. Accordingly, Toyota engaged in unlawful trade practices,
12 including representing that Defective Vehicles have characteristics, uses, benefits,
13 and qualities which they do not have; representing that Defective Vehicles are of a
14 particular standard and quality when they are not; and advertising Defective Vehicles
15 with the intent not to sell them as advertised. Toyota knew or should have known
16 that its conduct violated the OUTPA.
17

18 1936. Toyota engaged in a deceptive trade practice when it failed to disclose
19 material information concerning the Toyota vehicles which was known to Toyota at
20 the time of the sale. Toyota deliberately withheld the information about the vehicles’
21 propensity for rapid, uncontrolled acceleration in order to ensure that consumers
22 would purchase its vehicles and to induce the consumer to enter into a transaction.
23

24 1937. The propensity of the Toyotas for rapid, uncontrolled acceleration and
25 their lack of a fail-safe mechanism were material to Plaintiffs and the Class. Had
26 Plaintiffs and the Class known that their Toyotas had these serious safety defects,
27 they would not have purchased their Toyotas.
28

1 1938. Toyota's failure to disclose material information has injured Plaintiffs
2 and the Class. Plaintiffs and the Class overpaid for their vehicles and did not receive
3 the benefit of their bargain. The value of their Toyota's has diminished now that the
4 safety issues have come to light, and Plaintiffs and the Class own vehicles that are
5 not safe.

6
7 1939. Plaintiffs are entitled to recover the greater of actual damages or \$1,000
8 pursuant to N.H. REV. STAT. § 358-A:10. Plaintiffs are also entitled to treble
9 damages because Toyota acted willfully in its unfair and deceptive practices.

10 **COUNT II**
11
12 **BREACH OF EXPRESS WARRANTY**
13 **(N.H. Rev. Stat. Ann. § 382-A:2-313)**

14 1940. Plaintiffs reallege and incorporate by reference all paragraphs as though
15 fully set forth herein.

16 1941. Toyota is and was at all relevant times a merchant with respect to motor
17 vehicles under N.H. REV. STAT. § 382-A:2-313.

18 1942. In the course of selling its vehicles, Toyota expressly warranted in
19 writing that the Vehicles were covered by a Basic Warranty.
20

21 1943. Toyota breached the express warranty to repair and adjust to correct
22 defects in materials and workmanship of any part supplied by Toyota. Toyota has
23 not repaired or adjusted, and has been unable to repair or adjust, the Vehicles'
24 materials and workmanship defects.

25 1944. In addition to this Basic Warranty, Toyota expressly warranted several
26 attributes, characteristics and qualities.
27
28

1 1945. These warranties are only a sampling of the numerous warranties that
2 Toyota made relating to safety, reliability and operation, which are more fully
3 outlined in Section IV.A., *supra*. Generally these express warranties promise
4 heightened, superior, and state-of-the-art safety, reliability, performance standards,
5 and promote the benefits of ETCS. These warranties were made, *inter alia*, in
6 advertisements, in Toyota's "e brochures," and in uniform statements provided by
7 Toyota to be made by salespeople. These affirmations and promises were part of the
8 basis of the bargain between the parties.
9

10 1946. These additional warranties were also breached because the Defective
11 Vehicles were not fully operational, safe, or reliable (and remained so even after the
12 problems were acknowledged and a recall "fix" was announced), nor did they
13 comply with the warranties expressly made to purchasers or lessees. Toyota did not
14 provide at the time of sale, and has not provided since then, vehicles conforming to
15 these express warranties.
16

17 1947. Furthermore, the limited warranty of repair and/or adjustments to
18 defective parts, fails in its essential purpose because the contractual remedy is
19 insufficient to make the Plaintiffs and the Class whole and because the Defendants
20 have failed and/or have refused to adequately provide the promised remedies within
21 a reasonable time.
22

23 1948. Accordingly, recovery by the Plaintiffs is not limited to the limited
24 warranty of repair or adjustments to parts defective in materials or workmanship, and
25 Plaintiffs seek all remedies as allowed by law.
26

27 1949. Also, as alleged in more detail herein, at the time that Defendants
28 warranted and sold the vehicles they knew that the vehicles did not conform to the

1 warranties and were inherently defective, and Defendants wrongfully and
2 fraudulently misrepresented and/or concealed material facts regarding their vehicles.
3 Plaintiffs and the Class were therefore induced to purchase the vehicles under false
4 and/or fraudulent pretenses. The enforcement under these circumstances of any
5 limitations whatsoever precluding the recovery of incidental and/or consequential
6 damages is unenforceable.
7

8 1950. Moreover, many of the damages flowing from the Defective Vehicles
9 cannot be resolved through the limited remedy of “replacement or adjustments,” as
10 those incidental and consequential damages have already been suffered due to
11 Defendants’ fraudulent conduct as alleged herein, and due to their failure and/or
12 continued failure to provide such limited remedy within a reasonable time, and any
13 limitation on Plaintiffs’ remedies would be insufficient to make whole.
14

15 1951. Finally, due to the Defendants’ breach of warranties as set forth herein,
16 Plaintiffs and the Class assert as an additional and/or alternative remedy, as set forth
17 in N.H. REV. STAT. §§ 382-A:2-608 and 382-A:2-711, for a revocation of acceptance
18 of the goods, and for a return to Plaintiffs and to the Class of the purchase price of all
19 vehicles currently owned and for such other incidental and consequential damages as
20 allowed under N.H. REV. STAT. §§ 382-A:2-608 and 382-A:2-711.
21

22 1952. Toyota was provided notice of these issues by numerous complaints
23 filed against it, including the instant complaint, and by numerous individual letters
24 and communications sent by Plaintiffs and the Class before or within a reasonable
25 amount of time after Toyota issued the recall and the allegations of vehicle defects
26 became public.
27
28

COUNT IV
REVOCATION OF ACCEPTANCE
(N.H. Rev. Stat. Ann. § 382-A:2-608)

1961. Plaintiffs identified above demanded revocation and the demands were refused.

1963. Acceptance was reasonably induced by the difficulty of discovery of the defects and nonconformities before acceptance.

1965. When Plaintiffs sought to revoke acceptance, Toyota refused to accept return of the Defective Vehicles and to refund Plaintiffs' purchase price and monies paid.

1 Toyota is refusing to acknowledge any revocation of acceptance and return
2 immediately any payments made, Plaintiffs and the Class have not re-accepted their
3 Defective Vehicles by retaining them.

4 1967. These defects and nonconformities substantially impaired the value of
5 the Defective Vehicles to Plaintiffs and the Class. This impairment stems from two
6 basic sources. First, the Defective Vehicles fail in their essential purpose because
7 they present an unreasonably high risk of sudden unintended acceleration (a risk
8 acknowledged by Toyota's recall), rendering them unsafe in a very material way.
9 Second, the repair and adjust warranty has failed of its essential purpose because
10 Toyota cannot repair or adjust the Defective Vehicles.

11 1968. Plaintiffs and the Class provided notice of their intent to seek revocation
12 of acceptance by a class-action lawsuit seeking such relief. In addition, Plaintiffs
13 (and many Class members) have requested that Toyota accept return of their vehicles
14 and return all payments made. Plaintiffs on behalf of themselves and the Class
15 hereby demand revocation and tender their Defective Vehicles.

16 1969. Plaintiffs and the Class would suffer economic hardship if they returned
17 their vehicles but did not receive the return of all payments made by them. Because
18 Toyota is refusing to acknowledge any revocation of acceptance and return
19 immediately any payments made, Plaintiffs and the Class have not re-accepted their
20 Defective Vehicles by retaining them, as they must continue using them due to the
21 financial burden of securing alternative means of transport for an uncertain and
22 substantial period of time.

23 1970. Finally, due to the Defendants' breach of warranties as set forth herein,
24 Plaintiffs and the Class assert as an additional and/or alternative remedy, as set forth
25
26
27
28

1 in N.H. Stat. § 382-A:2-608, for a revocation of acceptance of the goods, and for a
2 return to Plaintiffs and to the Class of the purchase price of all vehicles currently
3 owned.

4 1971. Consequently, Plaintiffs and the Class are entitled to revoke their
5 acceptances, receive all payments made to Toyota, and to all incidental and
6 consequential damages, including the costs associated with purchasing safer
7 vehicles, and all other damages allowable under law, all in amounts to be proven at
8 trial.
9

10 **COUNT V**
11 **BREACH OF COMMON LAW WARRANTY**
12 **(Based On New Hampshire Law)**
13

14 1972. Plaintiffs reallege and incorporate by reference all paragraphs as though
15 fully set forth herein.

16 1973. To the extent Toyota's repair or adjust commitment is deemed not to be
17 a warranty under New Hampshire's Commercial Code, Plaintiffs plead in the
18 alternative under common law contract law. Toyota limited the remedies available
19 to Plaintiffs and the Class to just repairs and adjustments needed to correct defects in
20 materials or workmanship of any part supplied by Toyota, and/or warranted the
21 quality or nature of those services to Plaintiffs.
22

23 1974. Toyota breached this contractual obligation by failing to repair the
24 Defective Vehicles evidencing a sudden unintended acceleration problem, including
25 those that were recalled, or to replace them.
26

27 1975. As a direct and proximate result of Defendants' breach of contract,
28 Plaintiffs and the Class have been damaged in an amount to be proven at trial, which

1 shall include, but is not limited to, all compensatory damages, incidental and
2 consequential damages, and other damages allowed by law.

3 **COUNT VI**

4 **UNJUST ENRICHMENT**

5 **(Based On New Hampshire Law)**

6
7 1976. Plaintiffs reallege and incorporate by reference all paragraphs as though
8 fully set forth herein.

9 1977. Toyota had knowledge of the safety defects in its vehicles, which it
10 failed to disclose to Plaintiffs and the Class.

11 1978. As a result of their wrongful and fraudulent acts and omissions, as set
12 forth above, pertaining to the design defect of their vehicles and the concealment of
13 the defect, Toyota charged a higher price for their vehicles than the vehicles' true
14 value and Toyota obtained monies which rightfully belong to Plaintiffs.

15
16 1979. Toyota appreciated, accepted and retained the non-gratuitous benefits
17 conferred by Plaintiffs and the Class, who without knowledge of the safety defects
18 paid a higher price for vehicles which actually had lower values. It would be
19 unconscionable for Toyota to retain these wrongfully obtained profits.

20
21 1980. To the extent that no contract applies between the parties, Plaintiffs,
22 therefore, are entitled to restitution and seek an order establishing Toyota as
23 constructive trustees of the profits unjustly obtained, plus interest.

NEW JERSEY

COUNT I

VIOLATION OF NEW JERSEY CONSUMER FRAUD ACT

(N.J. Stat. Ann. § 56:8-1, *et seq.*)

1981. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1982. The New Jersey Consumer Fraud Act (“CFA”) makes unlawful “[t]he act, use or employment by any person of any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing concealment, suppression or omission of any material fact with the intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise or real estate, or with the subsequent performance of such person as aforesaid, whether or not any person has in fact been misled, deceived or damaged thereby...” N.J. STAT. ANN. § 56:8-2.

1983. Toyota is a person within the meaning of the CFA. N.J. STAT. ANN.
§ 56:8-1(d).

1984. In the course of Toyota's business, it knowingly failed to disclose and actively concealed the dangerous risk of throttle control failure and the lack of adequate fail-safe mechanisms in Defective Vehicles equipped with ETCS as described above. This was an unlawful practice in that Toyota represented that Defective Vehicles have characteristics, uses, benefits, and qualities which they do not have; represented that Defective Vehicles are of a particular standard and quality when they are not; and advertised Defective Vehicles with the intent not to sell them as advertised. Toyota knew or should have known that its conduct violated the CFA.

1 1985. Toyota engaged in an unlawful practice under the CFA when it failed to
2 disclose material information concerning the Toyota vehicles which was known to
3 Toyota at the time of the sale. Toyota deliberately withheld the information about the
4 vehicles' propensity for rapid, uncontrolled acceleration in order to ensure that
5 consumers would purchase its vehicles and to induce the consumer to enter into a
6 transaction.
7

8 1986. Toyota's unlawful practices cause substantial injury to consumers.

9 1987. The propensity of the Toyotas for rapid, uncontrolled acceleration and
10 their lack of a fail-safe mechanism were material to Plaintiffs and the Class. Had
11 Plaintiffs and the Class known that their Toyotas had these serious safety defects,
12 they would not have purchased their Toyotas.
13

14 1988. Plaintiffs and the Class suffered ascertainable loss of money or property
15 caused by Toyota's unlawful practices. Plaintiffs and the Class overpaid for their
16 vehicles and did not receive the benefit of their bargain. The value of their Toyotas
17 has diminished now that the safety issues have come to light, and Plaintiffs and the
18 Class own vehicles that are not safe.
19

20 1989. Plaintiffs are entitled to recover legal and/or equitable relief, treble
21 damages, and reasonable attorneys' fees pursuant to N.J. STAT. ANN. § 56:8-19.

22 1990. Pursuant to N.J. STAT. ANN. § 56:8-20, Plaintiffs will mail a copy of the
23 complaint to New Jersey's Attorney General within ten (10) days of filing it with the
24 Court.
25
26
27
28

COUNT II

BREACH OF EXPRESS WARRANTY

(N.J. Stat. Ann. § 12A:2-313)

1991. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1992. Toyota is and was at all relevant times a merchant with respect to motor vehicles.

1993. In the course of selling its vehicles, Toyota expressly warranted in writing that the Vehicles were covered by a Basic Warranty.

1994. Toyota breached the express warranty to repair and adjust to correct defects in materials and workmanship of any part supplied by Toyota. Toyota has not repaired or adjusted, and has been unable to repair or adjust, the Vehicles' materials and workmanship defects.

1995. In addition to this Basic Warranty, Toyota expressly warranted several attributes, characteristics and qualities, as set forth above.

1996. These warranties are only a sampling of the numerous warranties that Toyota made relating to safety, reliability and operation, which are more fully outlined in Section IV.A., *supra*. Generally these express warranties promise heightened, superior, and state-of-the-art safety, reliability, performance standards, and promote the benefits of ETCS. These warranties were made, *inter alia*, in advertisements, in Toyota's "e-brochures," and in uniform statements provided by Toyota to be made by salespeople. These affirmations and promises were part of the basis of the bargain between the parties.

1 1997. These additional warranties were also breached because the Defective
2 Vehicles were not fully operational, safe, or reliable (and remained so even after the
3 problems were acknowledged and a recall “fix” was announced), nor did they
4 comply with the warranties expressly made to purchasers or lessees. Toyota did not
5 provide at the time of sale, and has not provided since then, vehicles conforming to
6 these express warranties.
7

8 1998. Furthermore, the limited warranty of repair and/or adjustments to
9 defective parts, fails in its essential purpose because the contractual remedy is
10 insufficient to make the Plaintiffs and the Class whole and because the Defendants
11 have failed and/or have refused to adequately provide the promised remedies within
12 a reasonable time.
13

14 1999. Accordingly, recovery by the Plaintiffs is not limited to the limited
15 warranty of repair or adjustments to parts defective in materials or workmanship, and
16 Plaintiffs seek all remedies as allowed by law.
17

18 2000. Also, as alleged in more detail herein, at the time that Defendants
19 warranted and sold the vehicles they knew that the vehicles did not conform to the
20 warranties and were inherently defective, and Defendants wrongfully and
21 fraudulently misrepresented and/or concealed material facts regarding their vehicles.
22 Plaintiffs and the Class were therefore induced to purchase the vehicles under false
23 and/or fraudulent pretenses.
24

25 2001. Moreover, many of the damages flowing from the Defective Vehicles
26 cannot be resolved through the limited remedy of “replacement or adjustments,” as
27 those incidental and consequential damages have already been suffered due to their
28 failure and/or continued failure to provide such limited remedy within a reasonable

1 time, and any limitation on Plaintiffs' and the Class' remedies would be insufficient
2 to make Plaintiffs and the Class whole.

3 2002. Finally, due to the Defendants' breach of warranties as set forth herein,
4 Plaintiffs and the Class assert as an additional and/or alternative remedy, as set for in
5 N.J. STAT. ANN. § 12A:2-608, for revocation of acceptance of the goods, and for a
6 return to Plaintiffs and to the Class of the purchase price of all vehicles currently
7 owned.
8

9 2003. Toyota was provided notice of these issues by numerous complaints
10 filed against it, including the instant complaint, and by numerous individual letters
11 and communications sent by Plaintiffs and the Class before or within a reasonable
12 amount of time after Toyota issued the recall and the allegations of vehicle defects
13 became public.
14

15 2004. As a direct and proximate result of Toyota's breach of express
16 warranties, Plaintiffs and the Class have been damaged in an amount to be
17 determined at trial.
18

19 **COUNT III**

20 **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**

21 **(N.J. Stat. Ann. § 12A:2-314)**

22 2005. Plaintiffs reallege and incorporate by reference all paragraphs as though
23 fully set forth herein.

24 2006. Toyota is and was at all relevant times a merchant with respect to motor
25 vehicles.
26

27 2007. A warranty that the Defective Vehicles were in merchantable condition
28 is implied by law in the instant transactions.

2009. Toyota was provided notice of these issues by numerous complaints filed against it, including the instant complaint, and by numerous individual letters and communications sent by Plaintiffs and the Class before or within a reasonable amount of time after Toyota issued the recall and the allegations of vehicle defects became public.

COUNT IV
REVOCATION OF ACCEPTANCE
(N.J. Stat. Ann. § 12A:2-608)

2012. Plaintiffs identified above demanded revocation and the demands were refused.

1 discovered them when they purchased or leased their automobiles from Toyota. On
2 the other hand, Toyota was aware of the defects and nonconformities at the time of
3 sale and thereafter.

4 2014. Acceptance was reasonably induced by the difficulty of discovery of the
5 defects and nonconformities before acceptance.

6 2015. There has been no change in the condition of Plaintiffs' vehicles not
7 caused by the defects and nonconformities.

8 2016. When Plaintiffs sought to revoke acceptance, Toyota refused to accept
9 return of the Defective Vehicles and to refund Plaintiffs' purchase price and monies
10 paid.
11

12 2017. Plaintiffs and the Class would suffer economic hardship if they returned
13 their vehicles but did not receive the return of all payments made by them. Because
14 Toyota is refusing to acknowledge any revocation of acceptance and return
15 immediately any payments made, Plaintiffs and the Class have not re-accepted their
16 Defective Vehicles by retaining them.
17

18 2018. These defects and nonconformities substantially impaired the value of
19 the Defective Vehicles to Plaintiffs and the Class. This impairment stems from two
20 basic sources. First, the Defective Vehicles fail in their essential purpose because
21 they present an unreasonably high risk of sudden unintended acceleration (a risk
22 acknowledged by Toyota's recall), rendering them unsafe in a material way. Second,
23 the repair and adjust warranty has failed of its essential purpose because Toyota
24 cannot repair or adjust the Defective Vehicles.
25

26 2019. Plaintiffs and the Class provided notice of their intent to seek revocation
27 of acceptance by a class-action lawsuit seeking such relief. In addition, Plaintiffs
28

1 (and many Class members) have requested that Toyota accept return of their vehicles
2 and return all payments made. Plaintiffs on behalf of themselves and the Class
3 hereby demand revocation and tender their Defective Vehicles.

4 2020. Plaintiffs and the Class would suffer economic hardship if they returned
5 their vehicles but did not receive the return of all payments made by them. Because
6 Toyota is refusing to acknowledge any revocation of acceptance and return
7 immediately any payments made, Plaintiffs and the Class have not re-accepted their
8 Defective Vehicles by retaining them, as they must continue using them due to the
9 financial burden of securing alternative means of transport for an uncertain and
10 substantial period of time.

11 2021. Consequently, Plaintiffs and the Class are entitled to revoke their
12 acceptances, receive all payments made to Toyota, and to all incidental and
13 consequential damages, including the costs associated with purchasing safer
14 vehicles, and all other damages allowable under law, all in amounts to be proven at
15 trial.

16
17
18 **COUNT V**
19
20 **BREACH OF CONTRACT**
21 **(Based On New Jersey Law)**

22 2022. Plaintiffs reallege and incorporate by reference all paragraphs as though
23 fully set forth herein.

24 2023. To the extent Toyota's repair or adjust commitment is deemed not to be
25 a warranty under New Jersey's Commercial Code, Plaintiffs plead in the alternative
26 under common law contract law. Toyota limited the remedies available to Plaintiffs
27 and the Class to just repairs and adjustments needed to correct defects in materials or
28

1 workmanship of any part supplied by Toyota, and/or warranted the quality or nature
2 of those services to Plaintiffs.

3 2024. Toyota breached this contract obligation by failing to repair the
4 Defective Vehicles evidencing a sudden unintended acceleration problem, including
5 those that were recalled, or to replace them.
6

7 2025. As a direct and proximate result of Defendants' breach of contract,
8 Plaintiffs and the Class have been damaged in an amount to be proven at trial, which
9 shall include, but is not limited to, all compensatory damages, incidental and
10 consequential damages, and other damages allowed by law.
11

12 **COUNT VI**

13 **IN THE ALTERNATIVE, UNJUST ENRICHMENT**

14 **(Based On New Jersey Law)**

15 2026. Plaintiffs reallege and incorporate by reference all paragraphs as though
16 fully set forth herein.

17 2027. Toyota had knowledge of the safety defects in its vehicles, which it
18 failed to disclose to Plaintiffs and the Class.
19

20 2028. As a result of its wrongful and fraudulent acts and omissions, as set
21 forth above, pertaining to the design defect of their vehicles and the concealment of
22 the defect, Toyota charged a higher price for its vehicles than the vehicles' true
23 value. Toyota accordingly received a benefit from Plaintiffs to Plaintiffs' detriment.
24

25 2029. Toyota appreciated, accepted and retained the benefits conferred by
26 Plaintiffs and the Class, who without knowledge of the safety defects paid a higher
27 price for vehicles which actually had lower values. It would be inequitable and
28 unjust for Toyota to retain these wrongfully obtained profits.

1 2030. Plaintiffs, therefore, are entitled to restitution and seek an order
2 establishing Toyota as constructive trustees of the profits unjustly obtained, plus
3 interest.

4
5 **NEW MEXICO**
6 **COUNT I**
7 **BREACH OF EXPRESS WARRANTY**
8 **(N.M. Stat. Ann. § 55-2-313)**

9 2031. Plaintiffs reallege and incorporate by reference all paragraphs as though
10 fully set forth herein.

11 2032. Toyota is and was at all relevant times a merchant with respect to motor
12 vehicles under N.M. STAT. ANN. § 55-2-104.

13 2033. In the course of selling its vehicles, Toyota expressly warranted in
14 writing that the Vehicles were covered by a Basic Warranty.

15 2034. Toyota breached the express warranty to repair and adjust to correct
16 defects in materials and workmanship of any part supplied by Toyota. Toyota has
17 not repaired or adjusted, and has been unable to repair or adjust, the Vehicles'
18 materials and workmanship defects.

19 2035. In addition to this Basic Warranty, Toyota expressly warranted several
20 attributes, characteristics and qualities, as set forth above.

21 2036. These warranties are only a sampling of the numerous warranties that
22 Toyota made relating to safety, reliability and operation, which are more fully
23 outlined in Section IV.A., *supra*. Generally these express warranties promise
24 heightened, superior, and state-of-the-art safety, reliability, performance standards,
25 and promote the benefits of ETCS. These warranties were made, *inter alia*, in
26
27
28

1 advertisements, in Toyota's "e-brochures," and in uniform statements provided by
2 Toyota to be made by salespeople. These affirmations and promises were part of the
3 basis of the bargain between the parties.

4 2037. These additional warranties were also breached because the Defective
5 Vehicles were not fully operational, safe, or reliable (and remained so even after the
6 problems were acknowledged and a recall "fix" was announced), nor did they
7 comply with the warranties expressly made to purchasers or lessees. Toyota did not
8 provide at the time of sale, and has not provided since then, vehicles conforming to
9 these express warranties.
10

11 2038. Furthermore, the limited warranty of repair and/or adjustments to
12 defective parts, fails in its essential purpose because the contractual remedy is
13 insufficient to make the Plaintiffs and the Class whole and because the Defendants
14 have failed and/or have refused to adequately provide the promised remedies within
15 a reasonable time.
16

17 2039. Accordingly, recovery by the Plaintiffs is not limited to the limited
18 warranty of repair or adjustments to parts defective in materials or workmanship, and
19 Plaintiffs seek all remedies as allowed by law.
20

21 2040. Also, as alleged in more detail herein, at the time that Defendants
22 warranted and sold the vehicles they knew that the vehicles did not conform to the
23 warranties and were inherently defective, and Defendants wrongfully and
24 fraudulently misrepresented and/or concealed material facts regarding their vehicles.
25 Plaintiffs and the Class were therefore induced to purchase the vehicles under false
26 and/or fraudulent pretenses. The enforcement under these circumstances of any
27
28

1 limitations whatsoever precluding the recovery of incidental and/or consequential
2 damages is unenforceable.

3 2041. Moreover, many of the damages flowing from the Defective Vehicles
4 cannot be resolved through the limited remedy of “replacement or adjustments,” as
5 those incidental and consequential damages have already been suffered due to
6 Defendants’ fraudulent conduct as alleged herein, and due to their failure and/or
7 continued failure to provide such limited remedy within a reasonable time, and any
8 limitation on Plaintiffs’ and the Class’ remedies would be insufficient to make
9 Plaintiffs and the Class whole.
10

11 2042. Finally, due to the Defendants’ breach of warranties as set forth herein,
12 Plaintiffs and the Class assert as an additional and/or alternative remedy, as set forth
13 in N.M. STAT. ANN. § 55-2-711, for a revocation of acceptance of the goods, and for
14 a return to Plaintiffs and to the Class of the purchase price of all vehicles currently
15 owned and for such other incidental and consequential damages as allowed under
16 N.M. STAT. ANN. §§ 55-2-711 and 55-2-608.
17

18 2043. Toyota was provided notice of these issues by numerous complaints
19 filed against it, including the instant complaint, and by numerous individual letters
20 and communications sent by Plaintiffs and the Class before or within a reasonable
21 amount of time after Toyota issued the recall and the allegations of vehicle defects
22 became public.
23

24 2044. As a direct and proximate result of Toyota’s breach of express
25 warranties, Plaintiffs and the Class have been damaged in an amount to be
26 determined at trial.
27
28

COUNT II

BREACH OF THE IMPLIED WARRANTY OF MERCHANTABILITY

(N.M. Stat. Ann. § 55-2-314)

2045. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

2046. Toyota is and was at all relevant times a merchant with respect to motor vehicles under N.M. STAT. ANN. § 55-2-104.

2047. A warranty that the Defective Vehicles were in merchantable condition was implied by law in the instant transaction, pursuant to N.M. STAT. ANN. § 55-2-314.

2048. These vehicles, when sold and at all times thereafter, were not in merchantable condition and are not fit for the ordinary purpose for which cars are used. Specifically, the Defective Vehicles are inherently defective in that there are defects in the vehicle control systems that permit sudden unintended acceleration to occur; the Defective Vehicles do not have an adequate fail-safe to protect against such SUA events, nor do they have a brake-override; and the ETCS system was not adequately tested.

2049. Toyota was provided notice of these issues by numerous complaints filed against it, including the instant complaint, and by numerous individual letters and communications sent by Plaintiffs and the Class before or within a reasonable amount of time after Toyota issued the recall and the allegations of vehicle defects became public.

1 2050. As a direct and proximate result of Toyota's breach of the warranties of
2 merchantability, Plaintiffs and the Class have been damaged in an amount to be
3 proven at trial.

4
5 **COUNT III**
6 **REVOCATION OF ACCEPTANCE**
7 **(N.M. Stat. Ann. § 55-2-608)**

8 2051. Plaintiffs reallege and incorporate by reference all paragraphs as though
9 fully set forth herein.

10 2052. Plaintiffs identified above demanded revocation and the demands were
11 refused.

12 2053. Plaintiffs and the Class had no knowledge of such defects and
13 nonconformities, were unaware of these defects, and reasonably could not have
14 discovered them when they purchased or leased their automobiles from Toyota. On
15 the other hand, Toyota was aware of the defects and nonconformities at the time of
16 sale and thereafter.

17 2054. Acceptance was reasonably induced by the difficulty of discovery of the
18 defects and nonconformities before acceptance.

19 2055. There has been no substantial change in the condition of Plaintiffs'
20 vehicles not caused by the defects and nonconformities.

21 2056. When Plaintiffs sought to revoke acceptance, Toyota refused to accept
22 return of the Defective Vehicles and to refund Plaintiffs' purchase price and monies
23 paid.

24 2057. Plaintiffs and the Class would suffer economic hardship if they returned
25 their vehicles but did not receive the return of all payments made by them. Because
26
27
28

1 Toyota is refusing to acknowledge any revocation of acceptance and return
2 immediately any payments made, Plaintiffs and the Class have not re-accepted their
3 Defective Vehicles by retaining them.

4 2058. These defects and nonconformities substantially impaired the value of
5 the Defective Vehicles to Plaintiffs and the Class. This impairment stems from two
6 basic sources. First, the Defective Vehicles fail in their essential purpose because
7 they present an unreasonably high risk of sudden unintended acceleration (a risk
8 acknowledged by Toyota's recall), rendering them unsafe in a very material way.
9 Second, the repair and adjust warranty has failed of its essential purpose because
10 Toyota cannot repair or adjust the Defective Vehicles.

11 2059. Plaintiffs and the Class provided notice of their intent to seek revocation
12 of acceptance by a class-action lawsuit seeking such relief. In addition, Plaintiffs
13 (and many Class members) have requested that Toyota accept return of their vehicles
14 and return all payments made. Plaintiffs on behalf of themselves and the Class
15 hereby demand revocation and tender their Defective Vehicles.

16 2060. Plaintiffs and the Class would suffer economic hardship if they returned
17 their vehicles but did not receive the return of all payments made by them. Because
18 Toyota is refusing to acknowledge any revocation of acceptance and return
19 immediately any payments made, Plaintiffs and the Class have not re-accepted their
20 Defective Vehicles by retaining them, as they must continue using them due to the
21 financial burden of securing alternative means of transport for an uncertain and
22 substantial period of time.

23 2061. Finally, due to the Defendants' breach of warranties as set forth herein,
24 Plaintiffs and the Class assert as an additional and/or alternative remedy, as set forth
25
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28

1 in N.M. STAT. ANN. § 55-2-711, for a revocation of acceptance of the goods, and for
2 a return to Plaintiffs and to the Class of the purchase price of all vehicles currently
3 owned and for such other incidental and consequential damages as allowed under
4 N.M. STAT. ANN. § 55-2-711.

5
6 2062. Consequently, Plaintiffs and the Class are entitled to revoke their
7 acceptances, receive all payments made to Toyota, and to all incidental and
8 consequential damages, including the costs associated with purchasing safer vehicles,
9 and all other damages allowable under law, all in amounts to be proven at trial.

10 **COUNT IV**

11 **BREACH OF CONTRACT/COMMON LAW WARRANTY**

12 **(Based On New Mexico Laws)**

13
14 2063. Plaintiffs reallege and incorporate by reference all paragraphs as though
15 fully set forth herein.

16 2064. To the extent Toyota's repair or adjust commitment is deemed not to be
17 a warranty under the Uniform Commercial Code as adopted in New Mexico,
18 Plaintiffs plead in the alternative under common law warranty and contract law.
19 Toyota limited the remedies available to Plaintiffs and the Class to just repairs and
20 adjustments needed to correct defects in materials or workmanship of any part
21 supplied by Toyota, and/or warranted the quality or nature of those services to
22 Plaintiffs.

23
24 2065. Toyota breached this warranty or contract obligation by failing to repair
25 the Defective Vehicles evidencing a sudden unintended acceleration problem,
26 including those that were recalled, or to replace them.
27
28

2067. Defendants' breaches were malicious, fraudulent, oppressive, or committed recklessly with wanton disregard for the rights of the Plaintiffs and the Class. Accordingly, as Defendants have acted with the requisite culpable state of mind, the Plaintiffs and the Class seek exemplary damages against Defendants in an amount to be determined at trial.

2068. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

2070. Defendants had a duty to disclose these safety issues because they consistently marketed their vehicles as safe and proclaimed that safety is one of Toyota's highest corporate priorities. Once Defendants made representations to the public about safety, Defendants were under a duty to disclose these omitted facts, because where one does speak one must speak the whole truth and not conceal any facts which materially qualify those facts stated. One who volunteers information must be truthful, and the telling of a half-truth calculated to deceive is fraud.

1 2071. In addition, Defendants had a duty to disclose these omitted material
2 facts because they were known and/or accessible only to Defendants who have
3 superior knowledge and access to the facts, and Defendants knew they were not
4 known to or reasonably discoverable by Plaintiffs and the Class. These omitted facts
5 were material because they directly impact the safety of the Defective Vehicles.
6 Whether or not a vehicle accelerates only at the driver's command, and whether a
7 vehicle will stop or not upon application of the brake by the driver, are material
8 safety concerns. Defendants possessed exclusive knowledge of the defects rendering
9 Defective Vehicles inherently more dangerous and unreliable than similar vehicles.
10

11 2072. Defendants actively concealed and/or suppressed these material facts, in
12 whole or in part, with the intent to induce Plaintiffs and the Class to purchase
13 Defective Vehicles at a higher price for the vehicles, which did not match the
14 vehicles' true value.
15

16 2073. Defendants still have not made full and adequate disclosure and
17 continue to defraud Plaintiffs and the Class.
18

19 2074. Plaintiffs and the Class were unaware of these omitted material facts
20 and would not have acted as they did if they had known of the concealed and/or
21 suppressed facts. Plaintiffs' and the Class' actions were justified. Defendants were
22 in exclusive control of the material facts and such facts were not known to the public
23 or the Class.
24

25 2075. As a result of the concealment and/or suppression of the facts, Plaintiffs
26 and the Class sustained damage. For those Plaintiffs and the Class who elect to
27 affirm the sale, these damages include the difference between the actual value of that
28 which Plaintiffs and the Class paid and the actual value of that which they received,

1 together with additional damages arising from the sales transaction, amounts
2 expended in reliance upon the fraud, compensation for loss of use and enjoyment of
3 the property, and/or lost profits. For those Plaintiffs and the Class who want to
4 rescind the purchase, then those Plaintiffs and the Class are entitled to restitution and
5 consequential damages.
6

7 2076. Defendants' acts were done maliciously, oppressively, deliberately, with
8 intent to defraud, and in reckless disregard of Plaintiffs' and the Class' rights and
9 well-being to enrich Defendants. Defendants' conduct warrants an assessment of
10 punitive damages in an amount sufficient to deter such conduct in the future, which
11 amount is to be determined according to proof.
12

13 **COUNT VI__**

14 **UNJUST ENRICHMENT**

15 **(Based On New Mexico Law)**

16 2077. Plaintiffs reallege and incorporate by reference all paragraphs as though
17 fully set forth herein.
18

19 2078. As a result of their wrongful and fraudulent acts and omissions, as set
20 forth above, pertaining to the design defect of their vehicles and the concealment of
21 the defect, Defendants charged a higher price for their vehicles than the vehicles'
22 true value and Defendants obtained monies which rightfully belong to Plaintiffs.
23

24 2079. Defendants enjoyed the benefit of increased financial gains, to the
25 detriment of Plaintiffs and the Class, who paid a higher price for vehicles which
26 actually had lower values. Defendants knowingly benefited at the expense of
27 Plaintiffs and the Class. It would be inequitable and unjust for Defendants to retain
28 these wrongfully obtained profits.

2080. Plaintiffs, therefore, seek an order establishing Defendants as constructive trustees of the profits unjustly obtained, plus interest.

COUNT VII

VIOLATIONS OF THE NEW MEXICO UNFAIR TRADE PRACTICES ACT

(N.M. Stat. Ann. §§ 57-12-1, *et seq.*)

2081. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

2082. Defendants’ above-described acts and omissions constitute unfair or deceptive acts or practices under the New Mexico Unfair Trade Practices Act, N.M. STAT. ANN. §§ 57-12-1, *et seq.* (“New Mexico UTPA”).

2083. By failing to disclose and actively concealing the dangerous risk of throttle control failure and the lack of adequate fail-safe mechanisms in Defective Vehicles equipped with ETCS, Defendants engaged in deceptive business practices prohibited by the New Mexico UTPA, including (1) representing that Defective Vehicles have characteristics and benefits, which they do not have, (2) representing that Defective Vehicles are of a particular standard, quality, and grade when they are not, (3) using exaggeration as to a material fact and by doing so deceiving or tending to deceive, (4) failing to state a material fact and by doing so deceiving or tending to deceive, and (5) representing that a transaction involving Defective Vehicles confers or involves rights, remedies, and obligations which it does not.

2084. As alleged above, Defendants made numerous material statements about the safety and reliability of Defective Vehicles that were either false or misleading.

1 Each of these statements contributed to the deceptive context of TMC's and TMS's
2 unlawful advertising and representations as a whole.

3 2085. Defendants took advantage of the lack of knowledge, ability,
4 experience, and capacity of Plaintiffs and the Class to a grossly unfair degree.
5 Defendants' actions resulted in a gross disparity between the value received and the
6 price paid by Plaintiffs and the Class. Defendants' actions constitute unconscionable
7 actions under § 57-12-2(E) of the New Mexico UTPA.
8

9 2086. Plaintiffs and the Class sustained damages as a result of the Defendants'
10 unlawful acts and are, therefore, entitled to damages and other relief provided for
11 under § 57-12-10 of the New Mexico UTPA. Because Defendants' conduct was
12 committed willfully, Plaintiffs and the Class seek treble damages.
13

14 2087. Plaintiffs and the Class also seek court costs and attorneys' fees under
15 § 57-12-10(C) of the New Mexico UTPA.

16 **COUNT VIII**

17 **VIOLATIONS OF THE NEW MEXICO**
18 **MOTOR VEHICLE DEALERS FRANCHISING ACT**

19 **(N.M. Stat. Ann. §§ 57-16-1, *et seq.*)**

20 2088. Plaintiffs reallege and incorporate by reference all paragraphs as though
21 fully set forth herein.

22 2089. As alleged above, Defendants used false, misleading, and deceptive
23 advertising in connection with their business in violation of the New Mexico Motor
24 Vehicle Dealers Franchising Act, N.M. STAT. ANN. §§ 57-16-1, *et seq.* ("New
25 Mexico MV DFA").
26
27
28

1 2090. Plaintiffs and the Class sustained damages as a result of the Defendants'
2 unlawful acts and are, therefore, entitled to damages and other relief provided for
3 under § 57-16-13 of the New Mexico MVDFA. Because Defendants' conduct was
4 committed maliciously, Plaintiffs and the Class seek treble damages.

5
6 2091. Plaintiffs and the Class also seek court costs and attorneys' fees under
7 § 57-16-13 of the New Mexico MVDFA.

8 **NEW YORK**
9 **COUNT I**
10 **DECEPTIVE ACTS OR PRACTICES**
11 **(N.Y. Gen. Bus. Law § 349)**

12
13 2092. Plaintiffs reallege and incorporate by reference all paragraphs as though
14 fully set forth herein.

15 2093. New York General Business Law ("G.B.L.") § 349 makes unlawful
16 "[d]eceptive acts or practices in the conduct of any business, trade or commerce."

17 2094. In the course of Toyota's business, it willfully failed to disclose and
18 actively concealed the dangerous risk of throttle control failure and the lack of
19 adequate fail-safe mechanisms in Defective Vehicles equipped with ETCS as
20 described above. Accordingly, Toyota made untrue, deceptive or misleading
21 representations of material facts to and omitted and/or concealed material facts.

22
23 2095. Toyota engaged in a deceptive acts or practices when it failed to
24 disclose material information concerning the Toyota vehicles which was known to
25 Toyota at the time of the sale. Toyota deliberately withheld the information about
26 the vehicles' propensity for rapid, uncontrolled acceleration in order to ensure that
27
28

1 consumers would purchase its vehicles and to induce the consumer to enter into a
2 transaction.

3 2096. The propensity of the Toyotas for rapid, uncontrolled acceleration and
4 their lack of a fail-safe mechanism were material to Plaintiffs and the Class. Had
5 Plaintiffs and the Class known that their Toyotas had these serious safety defects,
6 they would not have purchased their Toyotas.
7

8 2097. Because Toyota's deception takes place in the context of automobile
9 safety, that deception affects the public interest.

10 2098. Toyota's unlawful conduct constitutes unfair acts or practices that have
11 the capacity to and that do deceive consumers and have a broad impact on consumers
12 at large.
13

14 2099. Plaintiffs and the Class suffered injury caused by Toyota's failure to
15 disclose material information. Plaintiffs and the Class overpaid for their vehicles and
16 did not receive the benefit of their bargain. The value of their Toyota's has
17 diminished now that the safety issues have come to light, and Plaintiffs and the Class
18 own vehicles that are not safe.
19

20 2100. Pursuant to G.B.L. § 349, Plaintiffs are entitled to recover the greater of
21 actual damages or \$50. Because Toyota acted willfully or knowingly, Plaintiffs are
22 entitled to recover three times actual damages, up to \$1,000.

23 **COUNT II**

24 **FALSE ADVERTISING**

25 **(N.Y. Gen. Bus. Law § 350)**

26
27 2101. Plaintiffs reallege and incorporate by reference all paragraphs as though
28 fully set forth herein.

1 2102. New York G.B.L. § 350 makes unlawful “[f]alse advertising in the
2 conduct of any business, trade or commerce....” False advertising includes
3 “advertising, including labeling, of a commodity ... if such advertising is misleading
4 in a material respect,” taking into account “the extent to which the advertising fails to
5 reveal facts material in the light of ... representations [made] with respect to the
6 commodity....” N.Y. G.B.L. § 350-a.

8 2103. Defendants caused to be made or disseminated through New York,
9 through advertising, marketing and other publications, statements that were untrue or
10 misleading, and which were known, or which by the exercise of reasonable care
11 should have been known to Defendants, to be untrue and misleading to consumers
12 and Plaintiffs.

14 2104. Defendants have violated § 350 because the misrepresentations and
15 omissions regarding the safety and reliability of their vehicles as set forth in this
16 Complaint were material and likely to deceive a reasonable consumer.

17 2105. Plaintiffs and the Class have suffered an injury, including the loss of
18 money or property, as a result of Defendants’ false advertising. In purchasing or
19 leasing their vehicles, the Plaintiffs and the Class relied on the misrepresentations
20 and/or omissions of Toyota with respect to the safety and reliability of the vehicles.
21 Toyota’s representations turned out not to be true because the vehicles can
22 unexpectedly and dangerously accelerate out of the drivers’ control. Had the
23 Plaintiffs and the Class known this, they would not have purchased or leased their
24 Defective Vehicles and/or paid as much for them.
25
26
27
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2107. Plaintiffs request that this Court enter such orders or judgments as may be necessary to enjoin Defendants from continuing their unfair, unlawful, and/or deceptive practices. Plaintiffs and the Class are also entitled to recover their actual damages or \$500, whichever is greater. Because Toyota acted willfully or knowingly, Plaintiffs are entitled to recover three times actual damages, up to \$10,000.

2108. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

2110. The vehicles sold by Toyota are “things of danger,” in that they are of such a character that when used for the purpose for which they are made they are likely to be a source of danger to several or many people if not properly designed and fashioned.

2112. Toyota breached the express warranty to repair and adjust to correct defects in materials and workmanship of any part supplied by Toyota. Toyota has

1 not repaired or adjusted, and has been unable to repair or adjust, the Vehicles'
2 materials and workmanship defects.

3 2113. In addition to this Basic Warranty, Toyota expressly warranted several
4 attributes, characteristics and qualities, as set forth above.

5
6 2114. These warranties are only a sampling of the numerous warranties that
7 Toyota made relating to safety, reliability and operation, which are more fully
8 outlined in Section IV.A., *supra*. Generally these express warranties promise
9 heightened, superior, and state-of-the-art safety, reliability, performance standards,
10 and promote the benefits of ETCS. These warranties were made, *inter alia*, in
11 advertisements, in Toyota's "e brochures," and in uniform statements provided by
12 Toyota to be made by salespeople. These affirmations and promises were part of the
13 basis of the bargain between the parties.
14

15 2115. These additional warranties were also breached because the Defective
16 Vehicles were not fully operational, safe, or reliable (and remained so even after the
17 problems were acknowledged and a recall "fix" was announced), nor did they
18 comply with the warranties expressly made to purchasers or lessees. Toyota did not
19 provide at the time of sale, and has not provided since then, vehicles conforming to
20 these express warranties.
21

22 2116. Furthermore, the limited warranty of repair and/or adjustments to
23 defective parts, fails in its essential purpose because the contractual remedy is
24 insufficient to make the Plaintiffs and the Class whole and because the Defendants
25 have failed and/or have refused to adequately provide the promised remedies within
26 a reasonable time.
27
28

1 2117. Accordingly, recovery by the Plaintiffs is not limited to the limited
2 warranty of repair or adjustments to parts defective in materials or workmanship, and
3 Plaintiffs seek all remedies as allowed by law.

4 2118. Also, as alleged in more detail herein, at the time that Defendants
5 warranted and sold the vehicles they knew that the vehicles did not conform to the
6 warranties and were inherently defective, and Defendants wrongfully and
7 fraudulently misrepresented and/or concealed material facts regarding their vehicles.
8 Plaintiffs and the Class were therefore induced to purchase the vehicles under false
9 and/or fraudulent pretenses. The enforcement under these circumstances of any
10 limitations whatsoever precluding the recovery of incidental and/or consequential
11 damages is unenforceable.
12

13 2119. Moreover, many of the damages flowing from the Defective Vehicles
14 cannot be resolved through the limited remedy of “replacement or adjustments,” as
15 those incidental and consequential damages have already been suffered due to
16 Defendants’ fraudulent conduct as alleged herein, and due to their failure and/or
17 continued failure to provide such limited remedy within a reasonable time, and any
18 limitation on Plaintiffs’ remedies would be insufficient to make whole.
19

20 2120. Finally, due to the Defendants’ breach of warranties as set forth herein,
21 Plaintiffs and the Class assert as an additional and/or alternative remedy, as set forth
22 in N.Y. U.C.C. §§ 2-608 and 2-711, for a revocation of acceptance of the goods, and
23 for a return to Plaintiffs and to the Class of the purchase price of all vehicles
24 currently owned and for such other incidental and consequential damages as allowed
25 under N.Y. U.C.C. §§ 2-608 and 2-711.
26
27
28

2122. As a direct and proximate result of Toyota's breach of express warranties, Plaintiffs and the Class have been damaged in an amount to be determined at trial.

2123. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

2125. The vehicles sold by Toyota are “things of danger,” in that they are of such a character that when used for the purpose for which they are made they are likely to be a source of danger to several or many people if not properly designed and fashioned.

2127. These vehicles, when sold and at all times thereafter, were not in merchantable condition and are not fit for the ordinary purpose for which cars are used. Specifically, the Defective Vehicles are inherently defective in that there are

1 defects in the vehicle control systems that permit sudden unintended acceleration to
2 occur; the Defective Vehicles do not have an adequate fail-safe to protect against
3 such SUA events, nor do they have a brake-override; and the ETCS system was not
4 adequately tested.

5
6 2128. Toyota was provided notice of these issues by numerous complaints
7 filed against it, including the instant complaint, and by numerous individual letters
8 and communications sent by Plaintiffs and the Class before or within a reasonable
9 amount of time after Toyota issued the recall and the allegations of vehicle defects
10 became public.

11
12 2129. As a direct and proximate result of Toyota's breach of the warranties of
13 merchantability, Plaintiffs and the Class have been damaged in an amount to be
14 proven at trial.

15 **COUNT V**
16 **REVOCATION OF ACCEPTANCE**
17 **(N.Y. U.C.C. § 2-608)**

18
19 2130. Plaintiffs reallege and incorporate by reference all paragraphs as though
20 fully set forth herein.

21
22 2131. Plaintiffs identified above demanded revocation and the demands were
23 refused.

24
25 2132. Plaintiffs and the Class had no knowledge of such defects and
26 nonconformities, were unaware of these defects, and reasonably could not have
27 discovered them when they purchased or leased their automobiles from Toyota. On
28 the other hand, Toyota was aware of the defects and nonconformities at the time of
sale and thereafter.

1 2133. Acceptance was reasonably induced by the difficulty of discovery of the
2 defects and nonconformities before acceptance.

3 2134. There has been no change in the condition of Plaintiffs' vehicles not
4 caused by the defects and nonconformities.

5 2135. When Plaintiffs sought to revoke acceptance, Toyota refused to accept
6 return of the Defective Vehicles and to refund Plaintiffs' purchase price and monies
7 paid.

8
9 2136. Plaintiffs and the Class would suffer economic hardship if they returned
10 their vehicles but did not receive the return of all payments made by them. Because
11 Toyota is refusing to acknowledge any revocation of acceptance and return
12 immediately any payments made, Plaintiffs and the Class have not re-accepted their
13 Defective Vehicles by retaining them.

14
15 2137. These defects and nonconformities substantially impaired the value of
16 the Defective Vehicles to Plaintiffs and the Class. This impairment stems from two
17 basic sources. First, the Defective Vehicles fail in their essential purpose because
18 they present an unreasonably high risk of sudden unintended acceleration (a risk
19 acknowledged by Toyota's recall), rendering them unsafe in a very material way.
20 Second, the repair and adjust warranty has failed of its essential purpose because
21 Toyota cannot repair or adjust the Defective Vehicles.

22
23 2138. Plaintiffs and the Class provided notice of their intent to seek revocation
24 of acceptance by a class-action lawsuit seeking such relief. In addition, Plaintiffs
25 (and many Class members) have requested that Toyota accept return of their vehicles
26 and return all payments made. Plaintiffs on behalf of themselves and the Class
27 hereby demand revocation and tender their Defective Vehicles.
28

1 2139. Plaintiffs and the Class would suffer economic hardship if they returned
2 their vehicles but did not receive the return of all payments made by them. Because
3 Toyota is refusing to acknowledge any revocation of acceptance and return
4 immediately any payments made, Plaintiffs and the Class have not re-accepted their
5 Defective Vehicles by retaining them, as they must continue using them due to the
6 financial burden of securing alternative means of transport for an uncertain and
7 substantial period of time.

8
9 2140. Finally, due to the Defendants' breach of warranties as set forth herein,
10 Plaintiffs and the Class assert as an additional and/or alternative remedy, as set forth
11 in N.Y. U.C.C. § 2-608, for a revocation of acceptance of the goods, and for a return
12 to Plaintiffs and to the Class of the purchase price of all vehicles currently owned.

13
14 2141. Consequently, Plaintiffs and the Class are entitled to revoke their
15 acceptances, receive all payments made to Toyota, and to all incidental and
16 consequential damages, including the costs associated with purchasing safer vehicles,
17 and all other damages allowable under law, all in amounts to be proven at trial.

18
19 **COUNT VI**

20 **BREACH OF CONTRACT/COMMON LAW WARRANTY**

21 **(Based On New York Law)**

22 2142. Plaintiffs reallege and incorporate by reference all paragraphs as though
23 fully set forth herein.

24 2143. To the extent Toyota's repair or adjust commitment is deemed not to be
25 a warranty under New York's Uniform Commercial Code, Plaintiffs plead in the
26 alternative under common law contract law. Toyota limited the remedies available
27 to Plaintiffs and the Class to just repairs and adjustments needed to correct defects in
28

1 materials or workmanship of any part supplied by Toyota, and/or warranted the
2 quality or nature of those services to Plaintiffs.

3 2144. Toyota breached this warranty or contract obligation by failing to repair
4 the Defective Vehicles evidencing a sudden unintended acceleration problem,
5 including those that were recalled, or to replace them.
6

7 2145. As a direct and proximate result of Defendants' breach of contract or
8 common law warranty, Plaintiffs and the Class have been damaged in an amount to
9 be proven at trial, which shall include, but is not limited to, all compensatory
10 damages, incidental and consequential damages, and other damages allowed by law.
11

12 **COUNT VII**

13 **UNJUST ENRICHMENT**

14 **(Based On New York Law)**

15 2146. Plaintiffs reallege and incorporate by reference all paragraphs as though
16 fully set forth herein.

17 2147. Toyota had knowledge of the safety defects in its vehicles, which it
18 failed to disclose to Plaintiffs and the Class.
19

20 2148. As a result of its wrongful and fraudulent acts and omissions, as set
21 forth above, pertaining to the design defect of their vehicles and the concealment of
22 the defect, Toyota charged a higher price for their vehicles than the vehicles' true
23 value and Toyota obtained monies which rightfully belong to Plaintiffs.

24 2149. Toyota was thus enriched at the expense of Plaintiffs, and it would be
25 against equity and good conscience for Toyota to retain these wrongfully obtained
26 profits.
27
28

1 amount of time after Toyota issued the recall and the allegations of vehicle defects
2 became public.

3 2156. As a direct and proximate result of Toyota's breach of the warranties of
4 merchantability, Plaintiffs and the Class have been damaged in an amount to be
5 proven at trial.
6

7 **COUNT II**

8 **FRAUD BY CONCEALMENT**

9 **(Based On North Carolina Law)**

10 2157. Plaintiffs reallege and incorporate by reference all paragraphs as though
11 fully set forth herein.
12

13 2158. As set forth above, Defendants concealed and/or suppressed material
14 facts concerning the safety of their vehicles, which they were legally obligated to
15 disclose.

16 2159. Defendants had a duty to disclose these safety issues because they
17 consistently marketed their vehicles as safe and proclaimed that safety is one of
18 Toyota's highest corporate priorities. Once Defendants made representations to the
19 public about safety, Defendants were under a duty to disclose these omitted facts,
20 because where one does speak one must speak the whole truth and not conceal any
21 facts which materially qualify those facts stated. One who volunteers information
22 must be truthful, and the telling of a half-truth calculated to deceive is fraud.
23

24 2160. In addition, Defendants had a duty to disclose these omitted material
25 facts because they were known and/or accessible only to Defendants who have
26 superior knowledge and access to the facts, and Defendants knew they were not
27 known to or reasonably discoverable by Plaintiffs and the Class. These omitted facts
28

1 were material because they directly impact the safety of the Defective Vehicles.
2 Whether or not a vehicle accelerates only at the driver's command, and whether a
3 vehicle will stop or not upon application of the brake by the driver, are material
4 safety concerns. Defendants possessed exclusive knowledge of the defects rendering
5 Defective Vehicles inherently more dangerous and unreliable than similar vehicles.
6

7 2161. Defendants actively concealed and/or suppressed these material facts, in
8 whole or in part, with the intent to induce Plaintiffs and the Class to purchase
9 Defective Vehicles at a higher price for the vehicles, which did not match the
10 vehicles' true value.

11 2162. Defendants still have not made full and adequate disclosure and
12 continue to defraud Plaintiffs and the Class.
13

14 2163. Plaintiffs and the Class were unaware of these omitted material facts
15 and would not have acted as it did if they had known of the concealed and/or
16 suppressed facts. Plaintiffs and the Class' actions were justified. Defendants were in
17 exclusive control of the material facts and such facts were not known to the public or
18 to Plaintiffs and the Class.
19

20 2164. As a result of the concealment and/or suppression of the facts, Plaintiffs
21 and the Class sustained damage. For those Plaintiffs and the Class who elect to
22 affirm the sale, these damages include the difference between the actual value of that
23 which Plaintiffs and the Class paid and the actual value of that which they received,
24 together with additional damages arising from the sales transaction, amounts
25 expended in reliance upon the fraud, compensation for loss of use and enjoyment of
26 the property, and/or lost profits. For those Plaintiffs and the Class who want to
27
28

1 rescind the purchase, then those Plaintiffs and the Class are entitled to restitution and
2 consequential damages.

3 2165. Defendants' acts were done maliciously, oppressively, deliberately, with
4 intent to defraud, and in reckless disregard of Plaintiffs' and the Class' rights and
5 well-being to enrich Defendants. Defendants' conduct warrants an assessment of
6 punitive damages in an amount sufficient to deter such conduct in the future, which
7 amount is to be determined according to proof.

9 **COUNT III**

10 **UNJUST ENRICHMENT**

11 **(Based On North Carolina Law)**

12 2166. Plaintiffs reallege and incorporate by reference all paragraphs as though
13 fully set forth herein.

14 2167. As a result of their wrongful and fraudulent acts and omissions, as set
15 forth above, pertaining to the design defect of their vehicles and the concealment of
16 the defect, Defendants charged a higher price for their vehicles than the vehicles'
17 true value and Defendants obtained monies which rightfully belong to Plaintiffs.

18 2168. Defendants knowingly enjoyed the benefit of increased financial gains,
19 to the detriment of Plaintiffs and the Class, who paid a higher price for vehicles
20 which actually had lower values. It would be inequitable and unjust for Defendants
21 to retain these wrongfully obtained profits.

22 2169. Plaintiffs, therefore, are entitled to restitution and seek an order
23 establishing Toyota as constructive trustees of the profits unjustly obtained, plus
24 interest.
25
26
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COUNT IV

BREACH OF CONTRACT/COMMON LAW WARRANTY

(Based On North Carolina Law)

2170. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

2171. To the extent Toyota's repair or adjust commitment is deemed not to be a warranty under North Carolina's Commercial Code, Plaintiffs plead in the alternative under common law warranty and contract law. Toyota limited the remedies available to Plaintiffs and the Class to just repairs and adjustments needed to correct defects in materials or workmanship of any part supplied by Toyota, and/or warranted the quality or nature of those services to Plaintiffs.

2172. Toyota breached this warranty or contract obligation by failing to repair the Defective Vehicles evidencing a sudden unintended acceleration problem, including those that were recalled, or to replace them.

2173. As a direct and proximate result of Defendants' breach of contract or common law warranty, Plaintiffs and the Class have been damaged in an amount to be proven at trial, which shall include, but is not limited to, all compensatory damages, incidental and consequential damages, and other damages allowed by law.

NORTH DAKOTA

COUNT I

BREACH OF EXPRESS WARRANTY

(N.D. Cent. Code. § 41-02-30)

2174. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1 2175. Toyota is and was at all relevant times a merchant with respect to motor
2 vehicles.

3 2176. In the course of selling its vehicles, Toyota expressly warranted in
4 writing that the Vehicles were covered by a Basic Warranty.

5 2177. Toyota breached the express warranty to repair and adjust to correct
6 defects in materials and workmanship of any part supplied by Toyota. Toyota has
7 not repaired or adjusted, and has been unable to repair or adjust, the Vehicles'
8 materials and workmanship defects.

9
10 2178. In addition to this Basic Warranty, Toyota expressly warranted several
11 attributes, characteristics and qualities, as set forth above.

12 2179. These warranties are only a sampling of the numerous warranties that
13 Toyota made relating to safety, reliability and operation, which are more fully
14 outlined in Section IV.A., *supra*. Generally these express warranties promise
15 heightened, superior, and state-of-the-art safety, reliability, performance standards,
16 and promote the benefits of ETCS. These warranties were made, *inter alia*, in
17 advertisements, in Toyota's "e brochures," and in uniform statements provided by
18 Toyota to be made by salespeople. These affirmations and promises were part of the
19 basis of the bargain between the parties.

20
21 2180. These additional warranties were also breached because the Defective
22 Vehicles were not fully operational, safe, or reliable (and remained so even after the
23 problems were acknowledged and a recall "fix" was announced), nor did they
24 comply with the warranties expressly made to purchasers or lessees. Toyota did not
25 provide at the time of sale, and has not provided since then, vehicles conforming to
26 these express warranties.
27
28

1 2181. Furthermore, the limited warranty of repair and/or adjustments to
2 defective parts, fails in its essential purpose because the contractual remedy is
3 insufficient to make the Plaintiffs and the Class whole and because the Defendants
4 have failed and/or have refused to adequately provide the promised remedies within
5 a reasonable time.

6
7 2182. Accordingly, recovery by the Plaintiffs is not limited to the limited
8 warranty of repair or adjustments to parts defective in materials or workmanship, and
9 Plaintiffs seek all remedies as allowed by law.

10 2183. Also, as alleged in more detail herein, at the time that Defendants
11 warranted and sold the vehicles they knew that the vehicles did not conform to the
12 warranties and were inherently defective, and Defendants wrongfully and
13 fraudulently misrepresented and/or concealed material facts regarding their vehicles.
14 Plaintiffs and the Class were therefore induced to purchase the vehicles under false
15 and/or fraudulent pretenses.

16
17 2184. Moreover, many of the damages flowing from the Defective Vehicles
18 cannot be resolved through the limited remedy of “replacement or adjustments,” as
19 those incidental and consequential damages have already been suffered due to
20 Defendants’ fraudulent conduct as alleged herein, and due to their failure and/or
21 continued failure to provide such limited remedy within a reasonable time, and any
22 limitation on Plaintiffs’ and the Class’ remedies would be insufficient to make
23 Plaintiffs and the Class whole.

24
25 2185. Finally, due to the Defendants’ breach of warranties as set forth herein,
26 Plaintiffs and the Class assert as an additional and/or alternative remedy, as set forth
27 in N.D. CENT. CODE § 41-02-71 (2-608), for a revocation of acceptance of the goods,
28

1 and for a return to Plaintiffs and to the Class of the purchase price of all vehicles
2 currently owned.

3 2186. Toyota was provided notice of these issues by numerous complaints
4 filed against it, including the instant complaint, and by numerous individual letters
5 and communications sent by Plaintiffs and the Class before or within a reasonable
6 amount of time after Toyota issued the recall and the allegations of vehicle defects
7 became public.
8

9 2187. As a direct and proximate result of Toyota's breach of express
10 warranties, Plaintiffs and the Class have been damaged in an amount to be
11 determined at trial.
12

13 **COUNT II**

14 **BREACH OF THE IMPLIED WARRANTY OF MERCHANTABILITY**

15 **(N.D. Cent. Code § 41-02-31)**

16 2188. Plaintiffs reallege and incorporate by reference all paragraphs as though
17 fully set forth herein.

18 2189. Toyota is and was at all relevant times a merchant with respect to motor
19 vehicles.
20

21 2190. A warranty that the Defective Vehicles were merchantable is implied by
22 law in the instant transactions.

23 2191. These vehicles, when sold and at all times thereafter, were not
24 merchantable and are not fit for the ordinary purpose for which cars are used.
25 Specifically, the Defective Vehicles are inherently defective in that there are defects
26 in the vehicle control systems that permit sudden unintended acceleration to occur;
27 the Defective Vehicles do not have an adequate fail-safe to protect against such SUA
28

1 events, nor do they have a brake-override; and the ETCS system was not adequately
2 tested.

3 2192. As a direct and proximate result of Toyota's breach of the warranties of
4 merchantability, Plaintiffs and the Class have been damaged in an amount to be
5 proven at trial.
6

7 **COUNT III**

8 **UNJUST ENRICHMENT**

9 **(Based On North Dakota Law)**

10 2193. Plaintiffs reallege and incorporate by reference all paragraphs as though
11 fully set forth herein.
12

13 2194. Toyota had knowledge of the safety defects in its vehicles, which it
14 failed to disclose to Plaintiffs and the Class.

15 2195. As a result of their wrongful and fraudulent acts and omissions, as set
16 forth above, pertaining to the design defect of their vehicles and the concealment of
17 the defect, Toyota charged a higher price for their vehicles than the vehicles' true
18 value and Toyota was enriched.
19

20 2196. As a result of their wrongful and fraudulent acts and omissions, as set
21 forth above, pertaining to the design defect of their vehicles and the concealment of
22 the defect, Toyota charged a higher price for their vehicles than the vehicles' true
23 value and Plaintiffs were impoverished.

24 2197. As a result of their wrongful and fraudulent acts and omissions, as set
25 forth above, pertaining to the design defect of their vehicles and the concealment of
26 the defect, Toyota obtained monies which rightfully belong to Plaintiffs.
27
28

1 2198. No justification exists for Toyota's enrichment at the expense of
2 Plaintiffs' impoverishment.

3 2199. There is an absence of an equal or better remedy at law for Toyota's
4 actions.

5
6 **COUNT IV**
7 **VIOLATION OF THE NORTH DAKOTA CONSUMER FRAUD ACT**
8 **(N.D. Cent. Code § 51-15-02)**

9 2200. Plaintiffs reallege and incorporate by reference all paragraphs as though
10 fully set forth herein.

11 2201. The conduct of Toyota as set forth herein constitutes deceptive acts or
12 practices, fraud, and misrepresentation, including, but not limited to, Toyota's
13 manufacture and sale of vehicles with a sudden acceleration defect that lack brake-
14 override or other effective fail-safe mechanisms which Toyota failed to adequately
15 investigate, disclose and remedy, and Toyota's misrepresentations and omissions
16 regarding the safety and reliability of its vehicles.

17 2202. Plaintiffs and the Class were injured as a result of Defendant's conduct.
18 Plaintiffs overpaid for their Defective Vehicles and did not receive the benefit of
19 their bargain, and their vehicles have suffered a diminution in value.

20 2203. Toyota's conduct proximately caused the injuries to Plaintiffs and the
21 Class.

22 2204. Further, Toyota knowingly committed the conduct described above, and
23 thus, under N.D. CENT. CODE § 51-15-09, Toyota is liable to Plaintiffs and the Class
24 for treble damages in amounts to be proven at trial, as well as attorneys' fees, costs,
25 and disbursements.
26
27
28

COUNT V

REVOCATION OF ACCEPTANCE

(N.D. Cent. Code § 41-02-71 (2-608))

2205. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

2206. Plaintiffs identified above demanded revocation and the demands were refused.

2207. Plaintiffs and the Class had no knowledge of such defects and nonconformities, were unaware of these defects, and reasonably could not have discovered them when they purchased or leased their automobiles from Toyota. On the other hand, Toyota was aware of the defects and nonconformities at the time of sale and thereafter.

2208. Acceptance was reasonably induced by the difficulty of discovery of the defects and nonconformities before acceptance.

2209. There has been no change in the condition of Plaintiffs' vehicles not caused by the defects and nonconformities.

2210. When Plaintiffs sought to revoke acceptance, Toyota refused to accept return of the Defective Vehicles and to refund Plaintiffs' purchase price and monies paid.

2211. Plaintiffs and the Class would suffer economic hardship if they returned their vehicles but did not receive the return of all payments made by them. Because Toyota is refusing to acknowledge any revocation of acceptance and return immediately any payments made, Plaintiffs and the Class have not re-accepted their Defective Vehicles by retaining them.

1 2212. These defects and nonconformities substantially impaired the value of
2 the Defective Vehicles to Plaintiffs and the Class. This impairment stems from two
3 basic sources. First, the Defective Vehicles fail in their essential purpose because
4 they present an unreasonably high risk of sudden unintended acceleration (a risk
5 acknowledged by Toyota's recall), rendering them unsafe in a very material way.
6 Second, the repair and adjust warranty has failed of its essential purpose because
7 Toyota cannot repair or adjust the Defective Vehicles.
8

9 2213. Plaintiffs and the Class provided notice of their intent to seek revocation
10 of acceptance by a class-action lawsuit seeking such relief. In addition, Plaintiffs
11 (and many Class members) have requested that Toyota accept return of their vehicles
12 and return all payments made. Plaintiffs on behalf of themselves and the Class
13 hereby demand revocation and tender their Defective Vehicles.
14

15 2214. Plaintiffs and the Class would suffer economic hardship if they returned
16 their vehicles but did not receive the return of all payments made by them. Because
17 Toyota is refusing to acknowledge any revocation of acceptance and return
18 immediately any payments made, Plaintiffs and the Class have not re-accepted their
19 Defective Vehicles by retaining them, as they must continue using them due to the
20 financial burden of securing alternative means of transport for an uncertain and
21 substantial period of time.
22

23 2215. Finally, due to the Defendants' breach of warranties as set forth herein,
24 Plaintiffs and the Class assert as an additional and/or alternative remedy for a
25 revocation of acceptance of the goods, and for a return to Plaintiffs and to the Class
26 of the purchase price of all vehicles currently owned.
27
28

COUNT VI

(Based On North Dakota Law)

2218. To the extent Toyota's repair or adjust commitment is deemed not to be a warranty under North Dakota's Century Code, Plaintiffs plead in the alternative under common law warranty and contract law. Toyota limited the remedies available to Plaintiffs and the Class to just repairs and adjustments needed to correct defects in materials or workmanship of any part supplied by Toyota, and/or warranted the quality or nature of those services to Plaintiffs.

2220. As a direct and proximate result of Defendants' breach of contract or common law warranty, Plaintiffs and the Class have been damaged in an amount to be proven at trial, which shall include, but is not limited to, all compensatory damages, incidental and consequential damages, and other damages allowed by law.

COUNT VII

FRAUD BY CONCEALMENT

(Based On North Dakota Law)

2221. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

2222. As set forth above, Defendants concealed and/or suppressed material facts concerning the safety of their vehicles.

2223. Defendants had a duty to disclose these safety issues because they consistently marketed their vehicles as safe and proclaimed that safety is one of Toyota's highest corporate priorities. Once Defendants made representations to the public about safety, Defendants were under a duty to disclose these omitted facts, because where one does speak one must speak the whole truth and not conceal any facts which materially qualify those facts stated. One who volunteers information must be truthful, and the telling of a half-truth calculated to deceive is fraud.

2224. In addition, Defendants had a duty to disclose these omitted material facts because they were known and/or accessible only to Defendants who have superior knowledge and access to the facts, and Defendants knew they were not known to or reasonably discoverable by Plaintiffs and the Class. These omitted facts were material because they directly impact the safety of the Defective Vehicles. Whether or not a vehicle accelerates only at the driver's command, and whether a vehicle will stop or not upon application of the brake by the driver, are material safety concerns. Defendants possessed exclusive knowledge of the defects rendering Defective Vehicles inherently more dangerous and unreliable than similar vehicles.

1 2225. Defendants actively concealed and/or suppressed these material facts, in
2 whole or in part, with the intent to induce Plaintiffs and the Class to purchase
3 Defective Vehicles at a higher price for the vehicles, which did not match the
4 vehicles' true value.

5 2226. Defendants still have not made full and adequate disclosure and
6 continue to defraud Plaintiffs and the Class.
7

8 2227. Plaintiffs and the Class were unaware of these omitted material facts
9 and would not have acted as they did if they had known of the concealed and/or
10 suppressed facts. Plaintiffs' and the Class' actions were justified. Defendants were
11 in exclusive control of the material facts and such facts were not known to the public
12 or the Class.
13

14 2228. As a result of the concealment and/or suppression of the facts, Plaintiffs
15 and the Class sustained damage. For those Plaintiffs and the Class who elect to
16 affirm the sale, these damages, include the difference between the actual value of
17 that which Plaintiffs and the Class paid and the actual value of that which they
18 received, together with additional damages arising from the sales transaction,
19 amounts expended in reliance upon the fraud, compensation for loss of use and
20 enjoyment of the property, and/or lost profits. For those Plaintiffs and the Class who
21 want to rescind the purchase, then those Plaintiffs and the Class are entitled to
22 restitution and consequential damages.
23

24 2229. Defendants' acts were done maliciously, oppressively, deliberately, with
25 intent to defraud, and in reckless disregard of Plaintiffs' and the Class' rights and
26 well-being to enrich Defendants. Defendants' conduct warrants an assessment of
27
28

1 punitive damages in an amount sufficient to deter such conduct in the future, which
2 amount is to be determined according to proof.

3 **OHIO**

4 **COUNT I**

5 **VIOLATION OF OHIO CONSUMER SALES PRACTICES ACT**

6 **(Ohio Rev. Code Ann. § 1345.01, et seq.)**

7
8 2230. Plaintiffs reallege and incorporate by reference all paragraphs as though
9 fully set forth herein.

10 2231. The Ohio Consumer Protection Act, OHIO REV. CODE § 1345.02,
11 prohibits unfair or deceptive acts or practices in connection with a consumer
12 transaction. Specifically, the Act prohibits suppliers from representing that goods
13 have characteristics or uses or benefits which they do not have. The Act also
14 prohibits suppliers from representing that their goods are of a particular quality or
15 grade they are not.
16

17 2232. Defendants are “suppliers” as that term is defined in the Ohio Consumer
18 Protection Act, OHIO REV. CODE § 1345.01(C).
19

20 2233. Plaintiffs are “consumers” as that term is defined in the Ohio Consumer
21 Protection Act, OHIO REV. CODE § 1345.01(D).

22 2234. The conduct of Defendants alleged above constitutes unfair and/or
23 deceptive consumer sales practices in violation of OHIO REV. CODE § 1345.02
24 because Defendants represented through advertising and other marketing
25 communications that the vehicles were new and free from defects and could be
26 driven safely in normal operation. Instead, the vehicles were not of the standard,
27 quality or grade of new vehicles.
28

1 2235. Defendants' conduct caused Plaintiffs' damages as alleged.

2 2236. Plaintiff specifically does not allege herein a claim for violation of OHIO
3 REV. CODE § 1345.72.

4 2237. As a result of the foregoing wrongful conduct of Defendants, Plaintiffs
5 have been damaged in an amount to be proven at trial, including, but not limited to,
6 actual and statutory damages, treble damages, court costs and reasonable attorneys
7 fees, pursuant to OHIO REV. CODE § 1345.09, *et seq.*

9 **COUNT II**

10 **VIOLATION OF OHIO DECEPTIVE TRADE PRACTICES ACT**

11 **(Ohio Rev. Code Ann. § 4165.01, *et seq.***

12 2238. Plaintiffs reallege and incorporate by reference all paragraphs as though
13 fully set forth herein.

14 2239. OHIO REV. CODE § 4165.02(A) provides that a "person engages in a
15 deceptive trade practice when, in the course of the person's business, vocation, or
16 occupation," the person does any of the following: "(2) Causes likelihood of
17 confusion or misunderstanding as to the source, sponsorship, approval, or
18 certification of goods or services; ... (7) Represents that goods or services have
19 sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that
20 they do not have or that a person has a sponsorship, approval, status, affiliation, or
21 connection that the person does not have; ... (9) Represents that goods or services
22 are of a particular standard, quality, or grade, or that goods are of a particular style or
23 model, if they are of another; ... [and] (11) Advertises goods or services with intent
24 not to sell them as advertised."
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1 2240. Defendants are “persons” within the meaning of OHIO REV. CODE
2 § 4165.01(D).

3 2241. The vehicles sold to Plaintiffs were not of the particular sponsorship,
4 approval, characteristics, ingredients, uses, benefits, or qualities represented by
5 Defendants.

6 2242. The vehicles sold to Plaintiffs were not of the particular standard,
7 quality, and/or grade represented by Defendants.

8 2243. Defendants made false or misleading statements of fact concerning the
9 vehicles Plaintiffs purchased – *i.e.*, that such vehicles were suitable for ordinary use
10 – when Defendants, in fact, knew that they were defective and not suitable for
11 ordinary use.

12 2244. These statements materially influenced Plaintiffs’ decision to purchase
13 the Defective Vehicles, in that Defendants’ statements caused Plaintiffs to purchase
14 vehicles that they otherwise would not have had they known of the dangerous defect.

15 2245. Defendants’ deceptive trade practices caused Plaintiffs’ damages as
16 alleged.

17 2246. Defendants conduct was knowing and/or intentional and/or with malice
18 and/or demonstrated a complete lack of care and/or reckless and/or was in conscious
19 disregard for the rights of Plaintiffs.

20 2247. As a result of the foregoing wrongful conduct of Defendants, Plaintiffs
21 have been damaged in an amount to be proven at trial, including, but not limited to,
22 actual and punitive damages, equitable relief and reasonable attorneys’ fees.

1 **COUNT III**

2 **BREACH OF EXPRESS WARRANTY**

3 **(Ohio Rev. Code Ann. § 1302.26, et seq. (U.C.C. § 2-313))**

4 2248. Plaintiffs reallege and incorporate by reference all paragraphs as though
5 fully set forth herein.

6 2249. Defendants expressly warranted – through statements and
7 advertisements described above – that the vehicles were of high quality, and, at a
8 minimum, would actually work properly and safely.

9 2250. Defendants breached this warranty by knowingly selling to Plaintiffs
10 vehicles with dangerous defects, and which were not of high quality.

11 2251. Plaintiffs have been damaged as a direct and proximate result of the
12 breaches by Defendants in that the Defective Vehicles purchased by Plaintiffs were
13 and are worth far less than what the Plaintiffs paid to purchase, which was
14 reasonably foreseeable to Defendants.

15 **COUNT IV**

16 **OHIO BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**
17 **STRICT LIABILITY**

18 **(Ohio Rev. Code Ann. § 1302.27 (U.C.C. § 2-314))**

19 2252. Plaintiffs reallege and incorporate by reference all paragraphs as though
20 fully set forth herein.

21 2253. Defendants impliedly warranted that their vehicles were of good and
22 merchantable quality and fit, and safe for their ordinary intended use – transporting
23 the driver and passengers in reasonable safety during normal operation, and without
24 unduly endangering them or members of the public.

1 2261. Defendants also owed – and owe – a continuing duty to notify Plaintiffs
2 of the problem at issue and to repair the dangerous defects.

3 2262. Defendants breached these duties of reasonable care by designing,
4 engineering and manufacturing vehicles that accelerated out of control, and breached
5 their continuing duty to notify Plaintiffs of these defects.
6

7 2263. The foreseeable hazards and malfunctions include, but are not limited
8 to, the sudden and unanticipated and uncontrollable acceleration of these vehicles.

9 2264. Plaintiffs did not and could not know of the intricacies of these defects
10 and their latent and dangerous manifestations, or the likelihood of harm therefrom
11 arising in the normal use of their vehicles.
12

13 2265. At all relevant times, there existed alternative designs and engineering
14 which were both technically and economically feasible. Further, any alleged benefits
15 associated with the defective designs are vastly outweighed by the real risks
16 associated with sudden and uncontrollable acceleration.

17 2266. The vehicles were defective as herein alleged at the time they left
18 Defendants' factories, and the vehicles reached Plaintiffs without substantial change
19 in the condition in which they were sold.
20

21 2267. As a direct and proximate result of Defendants' breaches, Plaintiffs
22 have suffered damages.

23 2268. Accordingly, Plaintiffs are entitled to recover appropriate damages
24 including, but not limited to, diminution of value, return of lease payments and
25 penalties, and injunctive relief related to future lease payments or penalties.
26
27
28

COUNT VI

FRAUD & FRAUDULENT CONCEALMENT

(Based On Ohio Law)

2269. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

2270. Toyota intentionally concealed the above-described material safety information, or acted with reckless disregard for the truth, and denied Plaintiffs and the Class information that is highly relevant to their purchasing decision.

2271. Defendants further affirmatively misrepresented to Plaintiffs in advertising and other forms of communication, including standard and uniform material provided with each car, that the vehicles they were selling were new, had no significant defects and would perform and operate properly when driven in normal usage.

2272. The vehicles purchased or leased by Plaintiffs were, in fact, defective, unsafe and unreliable, because the vehicles were subject to sudden, extreme acceleration without adequate fail-safe mechanisms.

2273. Toyota had a duty to disclose this material safety information.

2274. The aforementioned concealment was material because if it had been disclosed Plaintiffs would not have bought or leased the vehicles.

2275. The aforementioned representations were material because they were facts that would typically be relied on by a person purchasing or leasing a new motor vehicle. Toyota knew its representations were false because it knew that people had died in its vehicles' unintended acceleration between 2002 and 2009. Toyota intentionally made the false statements in order to sell vehicles.

1 2276. Plaintiffs relied on Toyota's reputation – along with Toyota's failure to
2 disclose the acceleration problems and Toyota's affirmative assurance that its
3 vehicles were safe and reliable and other similar false statements – in purchasing or
4 leasing Toyota's vehicles.

5 2277. As a result of their reliance, Plaintiffs have been injured in an amount to
6 be proven at trial, including, but not limited to, their lost benefit of the bargain and
7 overpayment at the time of purchase and/or the diminished value of their vehicles.
8

9 2278. Defendants' conduct was knowing, intentional, with malice,
10 demonstrated a complete lack of care, and was in reckless disregard for the rights of
11 Plaintiffs. Plaintiffs are therefore entitled to an award of punitive damages.
12

13 **COUNT VII**
14 **UNJUST ENRICHMENT**
15 **(Based On Ohio Law)**

16 2279. Plaintiffs reallege and incorporate by reference all paragraphs as though
17 fully set forth herein.

18 2280. Plaintiffs paid Toyota the value of vehicles that are non-defective, and
19 in exchange, Toyota provided Plaintiffs vehicles that are, in fact, defective.
20

21 2281. Further, Plaintiffs paid Toyota the value for vehicles that would not be
22 compromised by substantial, invasive repairs, and in return received vehicles that
23 require such repairs.

24 2282. Further, Plaintiffs paid Toyota for vehicles they could operate, and in
25 exchange, Toyota provided Plaintiffs vehicles that could not be normally operated
26 because their defects posed the possibility of life-threatening injuries or death.
27
28

2284. As a direct and proximate result of Toyota's unjust enrichment, Plaintiffs have suffered and continue to suffer various damages, including, but not limited to, restitution of all amounts by which Defendants were enriched through their misconduct.

2285. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

2287. Toyota's actions as set forth above occurred in the conduct of trade or commerce.

1 wrongful conduct alleged herein occurred, and continues to occur, in the conduct of
2 Toyota's business.

3 2289. Plaintiffs and the Class were injured as a result of Defendant's conduct.
4 Plaintiffs overpaid for their Defective Vehicles and did not receive the benefit of
5 their bargain, and their vehicles have suffered a diminution in value.
6

7 2290. Toyota's conduct proximately caused the injuries to Plaintiffs and the
8 Class.

9 2291. Toyota is liable to Plaintiffs and the Class for damages in amounts to be
10 proven at trial, including attorneys' fees, costs, and treble damages.

11 2292. Pursuant to OKLA. STAT. tit. 15 § 751, Plaintiffs will serve the
12 Oklahoma Attorney General with a copy of this complaint as Plaintiffs seek
13 injunctive relief.
14

15 **COUNT II**

16 **VIOLATION OF OKLAHOMA DECEPTIVE TRADE PRACTICES ACT**

17 **(78 Okla. Stat. Ann. § 51, *et seq.*)**

18 2293. Plaintiffs reallege and incorporate by reference all paragraphs as though
19 fully set forth herein.
20

21 2294. The conduct of Toyota as set forth herein constitutes unfair or deceptive
22 acts or practices, including, but not limited to, Toyota's manufacture and sale of
23 vehicles with a sudden acceleration defect that lack brake-override or other effective
24 fail-safe mechanisms, which Toyota failed to adequately investigate, disclose and
25 remedy, and its misrepresentations and omissions regarding the safety and reliability
26 of its vehicles.
27
28

1 2295. Toyota's actions as set forth above occurred in the conduct of trade or
2 commerce.

3 2296. Toyota's actions impact the public interest because Plaintiffs were
4 injured in exactly the same way as millions of others purchasing and/or leasing
5 Toyota vehicles as a result of Toyota's generalized course of deception. All of the
6 wrongful conduct alleged herein occurred, and continues to occur, in the conduct of
7 Toyota's business.
8

9 2297. Plaintiffs and the Class were injured as a result of Defendant's conduct.
10 Plaintiffs overpaid for their Defective Vehicles and did not receive the benefit of
11 their bargain, and their vehicles have suffered a diminution in value.
12

13 2298. Toyota's conduct proximately caused the injuries to Plaintiffs and the
14 Class.

15 2299. Toyota is liable to Plaintiffs and the Class for damages in amounts to be
16 proven at trial, including attorneys' fees, costs, and treble damages.

17 2300. Pursuant to OKLA. STAT. tit. 78 § 51, Plaintiffs will serve the Oklahoma
18 Attorney General with a copy of this complaint as Plaintiffs seek injunctive relief.
19

20 **COUNT III**

21 **BREACH OF EXPRESS WARRANTY**

22 **(12A Okla. Stat. Ann. § 2-313)**

23 2301. Plaintiffs reallege and incorporate by reference all paragraphs as though
24 fully set forth herein.

25 2302. Toyota is and was at all relevant times a merchant with respect to motor
26 vehicles.
27
28

1 2303. In the course of selling its vehicles, Toyota expressly warranted in
2 writing that the Vehicles were covered by a Basic Warranty.

3 2304. Toyota breached the express warranty to repair and adjust to correct
4 defects in materials and workmanship of any part supplied by Toyota. Toyota has
5 not repaired or adjusted, and has been unable to repair or adjust, the Vehicles'
6 materials and workmanship defects.

7
8 2305. In addition to this Basic Warranty, Toyota expressly warranted several
9 attributes, characteristics and qualities, as set forth above.

10 2306. These warranties are only a sampling of the numerous warranties that
11 Toyota made relating to safety, reliability and operation, which are more fully
12 outlined in Section IV.A., *supra*. Generally these express warranties promise
13 heightened, superior, and state-of-the-art safety, reliability, performance standards,
14 and promote the benefits of ETCS. These warranties were made, *inter alia*, in
15 advertisements, in Toyota's "e brochures," and in uniform statements provided by
16 Toyota to be made by salespeople. These affirmations and promises were part of the
17 basis of the bargain between the parties.
18

19 2307. These additional warranties were also breached because the Defective
20 Vehicles were not fully operational, safe, or reliable (and remained so even after the
21 problems were acknowledged and a recall "fix" was announced), nor did they
22 comply with the warranties expressly made to purchasers or lessees. Toyota did not
23 provide at the time of sale, and has not provided since then, vehicles conforming to
24 these express warranties.
25

26 2308. Furthermore, the limited warranty of repair and/or adjustments to
27 defective parts, fails in its essential purpose because the contractual remedy is
28

1 insufficient to make the Plaintiffs and the Class whole and because the Defendants
2 have failed and/or have refused to adequately provide the promised remedies within
3 a reasonable time.

4 2309. Accordingly, recovery by the Plaintiffs is not limited to the limited
5 warranty of repair or adjustments to parts defective in materials or workmanship, and
6 Plaintiffs seek all remedies as allowed by law.

8 2310. Also, as alleged in more detail herein, at the time that Defendants
9 warranted and sold the vehicles they knew that the vehicles did not conform to the
10 warranties and were inherently defective, and Defendants wrongfully and
11 fraudulently misrepresented and/or concealed material facts regarding their vehicles.
12 Plaintiffs and the Class were therefore induced to purchase the vehicles under false
13 and/or fraudulent pretenses.

15 2311. Moreover, many of the damages flowing from the Defective Vehicles
16 cannot be resolved through the limited remedy of “replacement or adjustments,” as
17 those incidental and consequential damages have already been suffered due to
18 Defendants’ fraudulent conduct as alleged herein, and due to their failure and/or
19 continued failure to provide such limited remedy within a reasonable time, and any
20 limitation on Plaintiffs’ and the Class’ remedies would be insufficient to make
21 Plaintiffs and the Class whole.

23 2312. Finally, due to the Defendants’ breach of warranties as set forth herein,

24 2313. Plaintiffs and the Class assert as an additional and/or alternative
25 remedy, as set forth in 12A OKLA. STAT. ANN. § 2-608, for a revocation of
26 acceptance of the goods, and for a return to Plaintiffs and to the Class of the purchase
27 price of all vehicles currently owned.
28

2315. As a direct and proximate result of Toyota's breach of express warranties, Plaintiffs and the Class have been damaged in an amount to be determined at trial.

2316. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

2318. A warranty that the Defective Vehicles were in merchantable condition is implied by law in the instant transactions, pursuant to 12A OKLA. STAT. ANN. § 2-314.

1 such SUA events, nor do they have a brake-override; and the ETCS system was not
2 adequately tested.

3 2320. Toyota was provided notice of these issues by numerous complaints
4 filed against it, including the instant complaint, and by numerous individual letters
5 and communications sent by Plaintiffs and the Class before or within a reasonable
6 amount of time after Toyota issued the recall and the allegations of vehicle defects
7 became public.
8

9 2321. Plaintiffs and the Class have had sufficient dealings with either the
10 Defendants or their agents (dealerships) to establish privity of contract between
11 Plaintiffs and the Class. Notwithstanding this, privity is not required in this case
12 because Plaintiffs and the Class are intended third-party beneficiaries of contracts
13 between Toyota and its dealers; specifically, they are the intended beneficiaries of
14 Toyota's implied warranties. The dealers were not intended to be the ultimate
15 consumers of the Defective Vehicles and have no rights under the warranty
16 agreements provided with the Defective Vehicles; the warranty agreements were
17 designed for and intended to benefit the ultimate consumers only. Finally, privity is
18 also not required because Plaintiffs' and Class members' Toyotas are dangerous
19 instrumentalities due to the aforementioned defects and nonconformities.
20
21

22 2322. As a direct and proximate result of Toyota's breach of the warranties of
23 merchantability, Plaintiffs and the Class have been damaged in an amount to be
24 proven at trial.
25
26
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COUNT V

REVOCATION OF ACCEPTANCE

(12A Okla. Stat. Ann. § 2-608)

2323. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

2324. Plaintiffs identified above demanded revocation and the demands were refused.

2325. Plaintiffs and the Class had no knowledge of such defects and nonconformities, were unaware of these defects, and reasonably could not have discovered them when they purchased or leased their automobiles from Toyota. On the other hand, Toyota was aware of the defects and nonconformities at the time of sale and thereafter.

2326. Acceptance was reasonably induced by the difficulty of discovery of the defects and nonconformities before acceptance.

2327. There has been no change in the condition of Plaintiffs' vehicles not caused by the defects and nonconformities.

2328. When Plaintiffs sought to revoke acceptance, Toyota refused to accept return of the Defective Vehicles and to refund Plaintiffs' purchase price and monies paid.

2329. Plaintiffs and the Class would suffer economic hardship if they returned their vehicles but did not receive the return of all payments made by them. Because Toyota is refusing to acknowledge any revocation of acceptance and return immediately any payments made, Plaintiffs and the Class have not re-accepted their Defective Vehicles by retaining them.

1 2330. These defects and nonconformities substantially impaired the value of
2 the Defective Vehicles to Plaintiffs and the Class. This impairment stems from two
3 basic sources. First, the Defective Vehicles fail in their essential purpose because
4 they present an unreasonably high risk of sudden unintended acceleration (a risk
5 acknowledged by Toyota's recall), rendering them unsafe in a very material way.
6 Second, the repair and adjust warranty has failed of its essential purpose because
7 Toyota cannot repair or adjust the Defective Vehicles.
8

9 2331. Plaintiffs and the Class provided notice of their intent to seek revocation
10 of acceptance by a class-action lawsuit seeking such relief. In addition, Plaintiffs
11 (and many Class members) have requested that Toyota accept return of their vehicles
12 and return all payments made. Plaintiffs on behalf of themselves and the Class
13 hereby demand revocation and tender their Defective Vehicles.
14

15 2332. Plaintiffs and the Class would suffer economic hardship if they returned
16 their vehicles but did not receive the return of all payments made by them. Because
17 Toyota is refusing to acknowledge any revocation of acceptance and return
18 immediately any payments made, Plaintiffs and the Class have not re-accepted their
19 Defective Vehicles by retaining them, as they must continue using them due to the
20 financial burden of securing alternative means of transport for an uncertain and
21 substantial period of time.
22

23 2333. Finally, due to the Defendants' breach of warranties as set forth herein,
24 Plaintiffs and the Class assert as an additional and/or alternative remedy, as set forth
25 in 12A OKLA. STAT. ANN. § 2-608, for a revocation of acceptance of the goods, and
26 for a return to Plaintiffs and to the Class of the purchase price of all vehicles
27 currently owned.
28

COUNT VI

(Based On Oklahoma Law)

2336. To the extent Toyota's repair or adjust commitment is deemed not to be a warranty under Oklahoma's Commercial Code, Plaintiffs plead in the alternative under common law warranty and contract law. Toyota limited the remedies available to Plaintiffs and the Class to just repairs and adjustments needed to correct defects in materials or workmanship of any part supplied by Toyota, and/or warranted the quality or nature of those services to Plaintiffs.

2338. As a direct and proximate result of Defendants' breach of contract or common law warranty, Plaintiffs and the Class have been damaged in an amount to be proven at trial, which shall include, but is not limited to, all compensatory damages, incidental and consequential damages, and other damages allowed by law.

COUNT VII

FRAUD BY CONCEALMENT

(Based On Oklahoma Law)

2339. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

2340. As set forth above, Defendants concealed and/or suppressed material facts concerning the safety of their vehicles.

2341. Defendants had a duty to disclose these safety issues because they consistently marketed their vehicles as safe and proclaimed that safety is one of Toyota's highest corporate priorities. Once Defendants made representations to the public about safety, Defendants were under a duty to disclose these omitted facts, because where one does speak one must speak the whole truth and not conceal any facts which materially qualify those facts stated. One who volunteers information must be truthful, and the telling of a half-truth calculated to deceive is fraud.

2342. In addition, Defendants had a duty to disclose these omitted material facts because they were known and/or accessible only to Defendants who have superior knowledge and access to the facts, and Defendants knew they were not known to or reasonably discoverable by Plaintiffs and the Class. These omitted facts were material because they directly impact the safety of the Defective Vehicles. Whether or not a vehicle accelerates only at the driver's command, and whether a vehicle will stop or not upon application of the brake by the driver, are material safety concerns. Defendants possessed exclusive knowledge of the defects rendering Defective Vehicles inherently more dangerous and unreliable than similar vehicles.

1 2343. Defendants actively concealed and/or suppressed these material facts, in
2 whole or in part, with the intent to induce Plaintiffs and the Class to purchase
3 Defective Vehicles at a higher price for the vehicles, which did not match the
4 vehicles' true value.

5 2344. Defendants still have not made full and adequate disclosure and
6 continue to defraud Plaintiffs and the Class.
7

8 2345. Plaintiffs and the Class were unaware of these omitted material facts
9 and would not have acted as they did if they had known of the concealed and/or
10 suppressed facts. Plaintiffs' and the Class' actions were justified. Defendants were
11 in exclusive control of the material facts and such facts were not known to the public
12 or the Class.
13

14 2346. As a result of the concealment and/or suppression of the facts, Plaintiffs
15 and the Class sustained damage. For those Plaintiffs and the Class who elect to
16 affirm the sale, these damages, include the difference between the actual value of
17 that which Plaintiffs and the Class paid and the actual value of that which they
18 received, together with additional damages arising from the sales transaction,
19 amounts expended in reliance upon the fraud, compensation for loss of use and
20 enjoyment of the property, and/or lost profits. For those Plaintiffs and the Class who
21 want to rescind the purchase, then those Plaintiffs and the Class are entitled to
22 restitution and consequential damages.
23

24 2347. Defendants' acts were done maliciously, oppressively, deliberately, with
25 intent to defraud, and in reckless disregard of Plaintiffs' and the Class' rights and
26 well-being to enrich Defendants. Defendants' conduct warrants an assessment of
27
28

1 punitive damages in an amount sufficient to deter such conduct in the future, which
2 amount is to be determined according to proof.

3 **COUNT VIII**

4 **UNJUST ENRICHMENT**

5 **(Based On Oklahoma Law)**

6
7 2348. Plaintiffs reallege and incorporate by reference all paragraphs as though
8 fully set forth herein.

9 2349. Toyota had knowledge of the safety defects in its vehicles, which it
10 failed to disclose to Plaintiffs and the Class.

11 2350. As a result of their wrongful and fraudulent acts and omissions, as set
12 forth above, pertaining to the design defect of their vehicles and the concealment of
13 the defect, Toyota charged a higher price for their vehicles than the vehicles' true
14 value and Toyota obtained monies which rightfully belong to Plaintiffs.

15
16 2351. Toyota appreciated, accepted and retained the non-gratuitous benefits
17 conferred by Plaintiffs and the Class, who without knowledge of the safety defects
18 paid a higher price for vehicles which actually had lower values. It would be
19 inequitable and unjust for Toyota to retain these wrongfully obtained profits.
20

21 2352. Plaintiffs, therefore, are entitled to restitution and seek an order
22 establishing Toyota as constructive trustees of the profits unjustly obtained, plus
23 interest.
24
25
26
27
28

1 with the intent not to sell them as advertised. Toyota knew or should have known
2 that its conduct violated the OUTPA.

3 2358. As a result of these unlawful trade practices, Plaintiffs have suffered
4 ascertainable loss.

5 2359. Toyota engaged in a deceptive trade practice when it failed to disclose
6 material information concerning the Toyota vehicles which was known to Toyota at
7 the time of the sale. Toyota deliberately withheld the information about the vehicles'
8 propensity for rapid, uncontrolled acceleration in order to ensure that consumers
9 would purchase its vehicles and to induce the consumer to enter into a transaction.
10

11 2360. The propensity of the Toyotas for rapid, uncontrolled acceleration and
12 their lack of a fail-safe mechanism were material to Plaintiffs and the Class. Had
13 Plaintiffs and the Class known that their Toyotas had these serious safety defects,
14 they would not have purchased their Toyotas.
15

16 2361. Plaintiffs and the Class suffered ascertainable loss caused by Toyota's
17 failure to disclose material information. Plaintiffs and the Class overpaid for their
18 vehicles and did not receive the benefit of their bargain. The value of their Toyota's
19 has diminished now that the safety issues have come to light, and Plaintiffs and the
20 Class own vehicles that are not safe.
21

22 2362. Plaintiffs are entitled to recover the greater of actual damages or \$200
23 pursuant to OR. REV. STAT. § 646.638(1). Plaintiffs are also entitled to punitive
24 damages because Toyota engaged in conduct amounting to a particularly aggravated,
25 deliberate disregard of the rights of others.
26

27 2363. Pursuant to OR. REV. STAT. § 646.638(2), Plaintiffs will mail a copy of
28 the complaint to Oregon's attorney general.

COUNT II

BREACH OF THE IMPLIED WARRANTY OF MERCHANTABILITY

(Or. Rev. Stat. § 72.3140)

2364. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

2365. Toyota is and was at all relevant times a merchant with respect to motor vehicles.

2366. A warranty that the Defective Vehicles were in merchantable condition is implied by law in the instant transactions.

2367. These vehicles, when sold and at all times thereafter, were not in merchantable condition and are not fit for the ordinary purpose for which cars are used. Specifically, the Defective Vehicles are inherently defective in that there are defects in the vehicle control systems that permit sudden unintended acceleration to occur; the Defective Vehicles do not have an adequate fail-safe to protect against such SUA events, nor do they have a brake-override; and the ETCS system was not adequately tested.

2368. Toyota was provided notice of these issues by numerous complaints filed against it, including the instant complaint, and by numerous individual letters and communications sent by Plaintiffs and the Class before or within a reasonable amount of time after Toyota issued the recall and the allegations of vehicle defects became public.

2369. As a direct and proximate result of Toyota's breach of the warranties of merchantability, Plaintiffs and the Class have been damaged in an amount to be proven at trial.

COUNT III

REVOCATION OF ACCEPTANCE

(Or. Rev. Stat. § 72.6080)

2370. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

2371. Plaintiffs identified above demanded revocation and the demands were refused.

2372. Plaintiffs and the Class had no knowledge of such defects and nonconformities, were unaware of these defects, and reasonably could not have discovered them when they purchased or leased their automobiles from Toyota. On the other hand, Toyota was aware of the defects and nonconformities at the time of sale and thereafter.

2373. Acceptance was reasonably induced by the difficulty of discovery of the defects and nonconformities before acceptance.

2374. There has been no change in the condition of Plaintiffs' vehicles not caused by the defects and nonconformities.

2375. When Plaintiffs sought to revoke acceptance, Toyota refused to accept return of the Defective Vehicles and to refund Plaintiffs' purchase price and monies paid.

2376. Plaintiffs and the Class would suffer economic hardship if they returned their vehicles but did not receive the return of all payments made by them. Because Toyota is refusing to acknowledge any revocation of acceptance and return immediately any payments made, Plaintiffs and the Class have not re-accepted their Defective Vehicles by retaining them.

1 2377. These defects and nonconformities substantially impaired the value of
2 the Defective Vehicles to Plaintiffs and the Class. This impairment stems from two
3 basic sources. First, the Defective Vehicles fail in their essential purpose because
4 they present an unreasonably high risk of sudden unintended acceleration (a risk
5 acknowledged by Toyota's recall), rendering them unsafe in a very material way.
6 Second, the repair and adjust warranty has failed of its essential purpose because
7 Toyota cannot repair or adjust the Defective Vehicles.
8

9 2378. Plaintiffs and the Class provided notice of their intent to seek revocation
10 of acceptance by a class-action lawsuit seeking such relief. In addition, Plaintiffs
11 (and many Class members) have requested that Toyota accept return of their vehicles
12 and return all payments made. Plaintiffs on behalf of themselves and the Class
13 hereby demand revocation and tender their Defective Vehicles.
14

15 2379. Plaintiffs and the Class would suffer economic hardship if they returned
16 their vehicles but did not receive the return of all payments made by them. Because
17 Toyota is refusing to acknowledge any revocation of acceptance and return
18 immediately any payments made, Plaintiffs and the Class have not re-accepted their
19 Defective Vehicles by retaining them, as they must continue using them due to the
20 financial burden of securing alternative means of transport for an uncertain and
21 substantial period of time.
22

23 2380. Finally, due to the Defendants' breach of warranties as set forth herein,
24 Plaintiffs and the Class assert as an additional and/or alternative remedy, as set forth
25 in OR. REV. STAT. § 72.6080, for a revocation of acceptance of the goods, and for a
26 return to Plaintiffs and to the Class of the purchase price of all vehicles currently
27 owned.
28

COUNT IV
FRAUD BY CONCEALMENT
(Based On Oregon Law)

2383. As set forth above, Defendants concealed and/or suppressed material facts concerning the safety of their vehicles.

2385. In addition, Defendants had a duty to disclose these omitted material facts because they were known and/or accessible only to Defendants who have superior knowledge and access to the facts, and Defendants knew they were not known to or reasonably discoverable by Plaintiffs and the Class. These omitted facts were material because they directly impact the safety of the Defective Vehicles. Whether or not a vehicle accelerates only at the driver's command, and whether a

1 vehicle will stop or not upon application of the brake by the driver, are material
2 safety concerns. Defendants possessed exclusive knowledge of the defects rendering
3 Defective Vehicles inherently more dangerous and unreliable than similar vehicles.

4 2386. Defendants actively concealed and/or suppressed these material facts, in
5 whole or in part, with the intent to induce Plaintiffs and the Class to purchase
6 Defective Vehicles at a higher price for the vehicles, which did not match the
7 vehicles' true value.
8

9 2387. Defendants still have not made full and adequate disclosure and
10 continue to defraud Plaintiffs and the Class.

11 2388. Plaintiffs and the Class were unaware of these omitted material facts
12 and would not have acted as they did if they had known of the concealed and/or
13 suppressed facts. Plaintiffs' and the Class' actions were justified. Defendants were
14 in exclusive control of the material facts and such facts were not known to the public
15 or the Class.
16

17 2389. As a result of the concealment and/or suppression of the facts, Plaintiffs
18 and the Class sustained damage. For those Plaintiffs and the Class who elect to
19 affirm the sale, these damages, include the difference between the actual value of
20 that which Plaintiffs and the Class paid and the actual value of that which they
21 received, together with additional damages arising from the sales transaction,
22 amounts expended in reliance upon the fraud, compensation for loss of use and
23 enjoyment of the property, and/or lost profits. For those Plaintiffs and the Class who
24 want to rescind the purchase, then those Plaintiffs and the Class are entitled to
25 restitution and consequential damages.
26
27
28

1 2390. Defendants' acts were done maliciously, oppressively, deliberately, with
2 intent to defraud, and in reckless disregard of Plaintiffs' and the Class' rights and
3 well-being to enrich Defendants. Defendants' conduct warrants an assessment of
4 punitive damages in an amount sufficient to deter such conduct in the future, which
5 amount is to be determined according to proof.
6

7 **COUNT V**
8 **UNJUST ENRICHMENT**
9 **(Based On Oregon Law)**

10 2391. Plaintiffs reallege and incorporate by reference all paragraphs as though
11 fully set forth herein.
12

13 2392. Toyota had knowledge of the safety defects in its vehicles, which it
14 failed to disclose to Plaintiffs and the Class.

15 2393. As a result of their wrongful and fraudulent acts and omissions, as set
16 forth above, pertaining to the design defect of their vehicles and the concealment of
17 the defect, Toyota charged a higher price for their vehicles than the vehicles' true
18 value and Toyota obtained monies which rightfully belong to Plaintiffs.
19

20 2394. Toyota appreciated, accepted and retained the non-gratuitous benefits
21 conferred by Plaintiffs and the Class, who without knowledge of the safety defects
22 paid a higher price for vehicles which actually had lower values. It would be
23 inequitable and unjust for Toyota to retain these wrongfully obtained profits.
24

25 2395. Plaintiffs, therefore, are entitled to restitution and seek an order
26 establishing Toyota as constructive trustees of the profits unjustly obtained, plus
27 interest.
28

PENNSYLVANIA

COUNT I

**VIOLATION OF THE PENNSYLVANIA UNFAIR TRADE PRACTICES
AND CONSUMER PROTECTION LAW**

(73 P.S. § 201-1, *et seq.*)

2396. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

2397. The conduct of Toyota as set forth herein constitutes unfair or deceptive acts or practices, including, but not limited to, Toyota's manufacture and sale of vehicles with a sudden acceleration defect that lack brake-override or other effective fail-safe mechanisms, which Toyota failed to adequately investigate, disclose and remedy, and its misrepresentations and omissions regarding the safety and reliability of its vehicles.

2398. Toyota's actions as set forth above occurred in the conduct of trade or commerce.

2399. Toyota's actions impact the public interest because Plaintiffs were injured in exactly the same way as millions of others purchasing and/or leasing Toyota vehicles as a result of Toyota's generalized course of deception. All of the wrongful conduct alleged herein occurred, and continues to occur, in the conduct of Toyota's business.

2400. Plaintiffs and the Class suffered ascertainable loss as a result of Defendant's conduct. Plaintiffs overpaid for their Defective Vehicles and did not receive the benefit of their bargain, and their vehicles have suffered a diminution in value.

1 2401. Toyota's conduct proximately caused the injuries to Plaintiffs and the
2 Class.

3 2402. Toyota is liable to Plaintiffs and the Class for damages in amounts to be
4 proven at trial, including attorneys' fees, costs, and treble damages.
5

6 **COUNT II**

7 **BREACH OF EXPRESS WARRANTY**

8 **(13 Pa. Cons. Stat. Ann. § 2313)**

9 2403. Plaintiffs reallege and incorporate by reference all paragraphs as though
10 fully set forth herein.

11 2404. Toyota is and was at all relevant times a seller with respect to motor
12 vehicles.
13

14 2405. In the course of selling its vehicles, Toyota expressly warranted in
15 writing that the Vehicles were covered by a Basic Warranty.

16 2406. Toyota breached the express warranty to repair and adjust to correct
17 defects in materials and workmanship of any part supplied by Toyota. Toyota has
18 not repaired or adjusted, and has been unable to repair or adjust, the Vehicles'
19 materials and workmanship defects.
20

21 2407. In addition to this Basic Warranty, Toyota expressly warranted several
22 attributes, characteristics and qualities, as set forth above.

23 2408. These warranties are only a sampling of the numerous warranties that
24 Toyota made relating to safety, reliability and operation, which are more fully
25 outlined in Section IV.A., of the MCC. Generally these express warranties promise
26 heightened, superior, and state-of-the-art safety, reliability, performance standards,
27 and promote the benefits of ETCS. These warranties were made, *inter alia*, in
28

1 advertisements, in Toyota's "e brochures," and in uniform statements provided by
2 Toyota to be made by salespeople. These affirmations and promises were part of the
3 basis of the bargain between the parties.

4 2409. These additional warranties were also breached because the Defective
5 Vehicles were not fully operational, safe, or reliable (and remained so even after the
6 problems were acknowledged and a recall "fix" was announced), nor did they
7 comply with the warranties expressly made to purchasers or lessees. Toyota did not
8 provide at the time of sale, and has not provided since then, vehicles conforming to
9 these express warranties.
10

11 2410. Furthermore, the limited warranty of repair and/or adjustments to
12 defective parts, fails in its essential purpose because the contractual remedy is
13 insufficient to make the Plaintiffs and the Class whole and because the Defendants
14 have failed and/or have refused to adequately provide the promised remedies within
15 a reasonable time.
16

17 2411. Accordingly, recovery by the Plaintiffs is not limited to the limited
18 warranty of repair or adjustments to parts defective in materials or workmanship, and
19 Plaintiffs seek all remedies as allowed by law.
20

21 2412. Also, as alleged in more detail herein, at the time that Defendants
22 warranted and sold the vehicles they knew that the vehicles did not conform to the
23 warranties and were inherently defective, and Defendants wrongfully and
24 fraudulently misrepresented and/or concealed material facts regarding their vehicles.
25 Plaintiffs and the Class were therefore induced to purchase the vehicles under false
26 and/or fraudulent pretenses.
27
28

1 2413. Moreover, many of the damages flowing from the Defective Vehicles
2 cannot be resolved through the limited remedy of “replacement or adjustments,” as
3 those incidental and consequential damages have already been suffered due to
4 Defendants’ fraudulent conduct as alleged herein, and due to their failure and/or
5 continued failure to provide such limited remedy within a reasonable time, and any
6 limitation on Plaintiffs’ and the Class’ remedies would be insufficient to make
7 Plaintiffs and the Class whole.
8

9 2414. Finally, due to the Defendants’ breach of warranties as set forth herein,
10 Plaintiffs and the Class assert as an additional and/or alternative remedy, as set forth
11 in 13 PA. CONS. STAT. § 2608, for a revocation of acceptance of the goods, and for a
12 return to Plaintiffs and to the Class of the purchase price of all vehicles currently
13 owned.
14

15 2415. Toyota was provided notice of these issues by numerous complaints
16 filed against it, including the instant complaint, and by numerous individual letters
17 and communications sent by Plaintiffs and the Class before or within a reasonable
18 amount of time after Toyota issued the recall and the allegations of vehicle defects
19 became public.
20

21 2416. As a direct and proximate result of Toyota’s breach of express
22 warranties, Plaintiffs and the Class have been damaged in an amount to be
23 determined at trial.
24
25
26
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28

COUNT III

BREACH OF THE IMPLIED WARRANTY OF MERCHANTABILITY

(13 Pa. Cons. Stat. Ann. § 2314)

2417. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

2418. Toyota is and was at all relevant times a merchant with respect to motor vehicles.

2419. A warranty that the Defective Vehicles were in merchantable condition is implied by law in the instant transactions.

2420. These vehicles, when sold and at all times thereafter, were not in merchantable condition and are not fit for the ordinary purpose for which cars are used. Specifically, the Defective Vehicles are inherently defective in that there are defects in the vehicle control systems that permit sudden unintended acceleration to occur; the Defective Vehicles do not have an adequate fail-safe to protect against such SUA events, nor do they have a brake-override; and the ETCS system was not adequately tested.

2421. Toyota was provided notice of these issues by numerous complaints filed against it, including the instant complaint, and by numerous individual letters and communications sent by Plaintiffs and the Class before or within a reasonable amount of time after Toyota issued the recall and the allegations of vehicle defects became public.

2422. As a direct and proximate result of Toyota's breach of the warranties of merchantability, Plaintiffs and the Class have been damaged in an amount to be proven at trial.

COUNT IV

UNJUST ENRICHMENT

(Based On Pennsylvania Law)

2423. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

2424. Toyota had knowledge of the safety defects in its vehicles, which it failed to disclose to Plaintiffs and the Class.

2425. As a result of their wrongful and fraudulent acts and omissions, as set forth above, pertaining to the design defect of their vehicles and the concealment of the defect, Toyota charged a higher price for their vehicles than the vehicles' true value and Toyota obtained monies which rightfully belong to Plaintiffs.

2426. Toyota appreciated, accepted and retained the non-gratuitous benefits conferred by Plaintiffs and the Class, who without knowledge of the safety defects paid a higher price for vehicles which actually had lower values. It would be inequitable and unjust for Toyota to retain these wrongfully obtained profits.

2427. Plaintiffs, therefore, are entitled to restitution and seek an order establishing Toyota as constructive trustees of the profits unjustly obtained, plus interest.

COUNT V

BREACH OF CONTRACT/COMMON LAW WARRANTY

(Based On Pennsylvania Law)

2428. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1 2429. To the extent Toyota's repair or adjust commitment is deemed not to be
2 a warranty under Pennsylvania's Commercial Code, Plaintiffs plead in the alternative
3 under common law warranty and contract law. Toyota limited the remedies
4 available to Plaintiffs and the Class to just repairs and adjustments needed to correct
5 defects in materials or workmanship of any part supplied by Toyota, and/or
6 warranted the quality or nature of those services to Plaintiffs.
7

8 2430. Toyota breached this warranty or contract obligation by failing to repair
9 the Defective Vehicles evidencing a sudden unintended acceleration problem,
10 including those that were recalled, or to replace them.
11

12 2431. As a direct and proximate result of Defendants' breach of contract or
13 common law warranty, Plaintiffs and the Class have been damaged in an amount to
14 be proven at trial, which shall include, but is not limited to, all compensatory
15 damages, incidental and consequential damages, and other damages allowed by law.
16

17 **RHODE ISLAND**

18 **COUNT I**

19 **VIOLATION OF THE RHODE ISLAND UNFAIR TRADE PRACTICES**
20 **AND CONSUMER PROTECTION ACT**

21 **(R.I. Gen. Laws § 6-13.1, *et seq.*)**

22 2432. Plaintiffs reallege and incorporate by reference all paragraphs as though
23 fully set forth herein.

24 2433. Plaintiffs are persons who purchase or lease goods primarily for
25 personal, family, or household purposes within the meaning of R.I. GEN. LAWS § 6-
26 13.1-5.2(a).
27
28

1 2434. Rhode Island’s Unfair Trade Practices and Consumer Protection Act
2 (“UTPCPA”) prohibits “unfair or deceptive acts or practices in the conduct of any
3 trade or commerce” including: “(v) Representing that goods or services have
4 sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that
5 they do not have”; “(vii) Representing that goods or services are of a particular
6 standard, quality, or grade ..., if they are of another”; “(ix) Advertising goods or
7 services with intent not to sell them as advertised”; “(xii) Engaging in any other
8 conduct that similarly creates a likelihood of confusion or of misunderstanding”;
9 “(xiii) Engaging in any act or practice that is unfair or deceptive to the consumer”;
10 and “(xiv) Using any other methods, acts or practices which mislead or deceive
11 members of the public in a material respect.” R.I. GEN. LAWS § 6-13.1-1(6).
12

13
14 2435. In the course of Toyota’s business, it willfully failed to disclose and
15 actively concealed the dangerous risk of throttle control failure and the lack of
16 adequate fail-safe mechanisms in Defective Vehicles equipped with ETCS as
17 described above. Accordingly, Toyota engaged in unlawful trade practices,
18 including representing that Defective Vehicles have characteristics, uses, benefits,
19 and qualities which they do not have; representing that Defective Vehicles are of a
20 particular standard and quality when they are not; advertising Defective Vehicles
21 with the intent not to sell them as advertised; and otherwise engaging in conduct
22 likely to deceive.
23

24 2436. Toyota’s actions as set forth above occurred in the conduct of trade or
25 commerce.
26

27 2437. Plaintiffs suffered ascertainable loss of money as a result of Toyota’s
28 violation of the UTPCPA.

2439. Accordingly, Plaintiffs are entitled to recover the greater of actual damages or \$200 pursuant to R.I. GEN. LAWS § 6-13.1-5.2(a).

2440. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

2442. A warranty that the Defective Vehicles were in merchantable condition is implied by law in the instant transactions.

2444. Toyota was provided notice of these issues by numerous complaints filed against it, including the instant complaint, and by numerous individual letters

1 and communications sent by Plaintiffs and the Class before or within a reasonable
2 amount of time after Toyota issued the recall and the allegations of vehicle defects
3 became public.

4 2445. As a direct and proximate result of Toyota's breach of the warranties of
5 merchantability, Plaintiffs and the Class have been damaged in an amount to be
6 proven at trial.
7

8 **COUNT III**
9 **REVOCATION OF ACCEPTANCE**
10 **(R.I. Gen. Laws § 6A-2-608)**

11 2446. Plaintiffs reallege and incorporate by reference all paragraphs as though
12 fully set forth herein.
13

14 2447. Plaintiffs identified above demanded revocation and the demands were
15 refused.

16 2448. Plaintiffs and the Class had no knowledge of such defects and
17 nonconformities, were unaware of these defects, and reasonably could not have
18 discovered them when they purchased or leased their automobiles from Toyota. On
19 the other hand, Toyota was aware of the defects and nonconformities at the time of
20 sale and thereafter.
21

22 2449. Acceptance was reasonably induced by the difficulty of discovery of the
23 defects and nonconformities before acceptance.

24 2450. There has been no change in the condition of Plaintiffs' vehicles not
25 caused by the defects and nonconformities.
26
27
28

1 2451. When Plaintiffs sought to revoke acceptance, Toyota refused to accept
2 return of the Defective Vehicles and to refund Plaintiffs' purchase price and monies
3 paid.

4 2452. Plaintiffs and the Class would suffer economic hardship if they returned
5 their vehicles but did not receive the return of all payments made by them. Because
6 Toyota is refusing to acknowledge any revocation of acceptance and return
7 immediately any payments made, Plaintiffs and the Class have not re-accepted their
8 Defective Vehicles by retaining them.

9 2453. These defects and nonconformities substantially impaired the value of
10 the Defective Vehicles to Plaintiffs and the Class. This impairment stems from two
11 basic sources. First, the Defective Vehicles fail in their essential purpose because
12 they present an unreasonably high risk of sudden unintended acceleration (a risk
13 acknowledged by Toyota's recall), rendering them unsafe in a very material way.
14 Second, the repair and adjust warranty has failed of its essential purpose because
15 Toyota cannot repair or adjust the Defective Vehicles.

16 2454. Plaintiffs and the Class provided notice of their intent to seek revocation
17 of acceptance by a class-action lawsuit seeking such relief. In addition, Plaintiffs
18 (and many Class members) have requested that Toyota accept return of their vehicles
19 and return all payments made. Plaintiffs on behalf of themselves and the Class
20 hereby demand revocation and tender their Defective Vehicles.

21 2455. Plaintiffs and the Class would suffer economic hardship if they returned
22 their vehicles but did not receive the return of all payments made by them. Because
23 Toyota is refusing to acknowledge any revocation of acceptance and return
24 immediately any payments made, Plaintiffs and the Class have not re-accepted their
25
26
27
28

1 Defective Vehicles by retaining them, as they must continue using them due to the
2 financial burden of securing alternative means of transport for an uncertain and
3 substantial period of time.

4 2456. Finally, due to the Defendants' breach of warranties as set forth herein,
5 Plaintiffs and the Class assert as an additional and/or alternative remedy, as set forth
6 in R.I. GEN. LAWS § 6A-2-608, for a revocation of acceptance of the goods, and for a
7 return to Plaintiffs and to the Class of the purchase price of all vehicles currently
8 owned.
9

10 2457. Consequently, Plaintiffs and the Class are entitled to revoke their
11 acceptances, receive all payments made to Toyota, and to all incidental and
12 consequential damages, including the costs associated with purchasing safer vehicles,
13 and all other damages allowable under law, all in amounts to be proven at trial.
14

15 **COUNT IV**

16 **UNJUST ENRICHMENT**

17 **(Based On Rhode Island Law)**

18 2458. Plaintiffs reallege and incorporate by reference all paragraphs as though
19 fully set forth herein.
20

21 2459. Toyota had knowledge of the safety defects in its vehicles, which it
22 failed to disclose to Plaintiffs and the Class.

23 2460. As a result of their wrongful and fraudulent acts and omissions, as set
24 forth above, pertaining to the design defect of their vehicles and the concealment of
25 the defect, Toyota charged a higher price for their vehicles than the vehicles' true
26 value and Toyota obtained monies which rightfully belong to Plaintiffs.
27
28

1 2461. Toyota appreciated, accepted and retained the benefits conferred by
2 Plaintiffs and the Class, who without knowledge of the safety defects paid a higher
3 price for vehicles which actually had lower values. It would be inequitable and
4 unjust for Toyota to retain these wrongfully obtained profits.
5

6 2462. Plaintiffs, therefore, are entitled to restitution and seek an order
7 establishing Toyota as constructive trustees of the profits unjustly obtained, plus
8 interest.

9 **SOUTH CAROLINA**

10 **COUNT I**

11 **BREACH OF THE IMPLIED WARRANTY OF MERCHANTABILITY**

12 **(S.C. Code § 36-2-314)**

13
14 2463. Plaintiffs reallege and incorporate by reference all paragraphs as though
15 fully set forth herein.

16 2464. Toyota is and was at all relevant times a merchant with respect to motor
17 vehicles under S.C. CODE § 36-2-314 .

18 2465. A warranty that the Defective Vehicles were in merchantable condition
19 was implied by law in the instant transaction, pursuant to S.C. CODE § 36-2-314.
20

21 2466. These vehicles, when sold and at all times thereafter, were not in
22 merchantable condition and are not fit for the ordinary purpose for which vehicles
23 are used. Specifically, the Defective Vehicles are inherently defective in that there
24 are defects in the vehicle control systems that permit sudden unintended acceleration
25 to occur; the Defective Vehicles do not have an adequate fail-safe to protect against
26 such SUA events, nor do they have a brake-override; and the ETCS system was not
27 adequately tested.
28

2468. As a direct and proximate result of Toyota's breach of the warranties of merchantability, Plaintiffs and the Class have been damaged in an amount to be proven at trial.

COUNT II

(Based On South Carolina Law)

2470. As a result of their wrongful and fraudulent acts and omissions, as set forth above, pertaining to the design defect of their vehicles and the concealment of the defect, Defendants charged a higher price for their vehicles than the vehicles' true value and Defendants obtained monies which rightfully belong to Plaintiffs.

2472. Plaintiffs, therefore, are entitled to restitution and seek an order establishing Toyota as constructive trustees of the profits unjustly obtained, plus interest.

COUNT III

**VIOLATIONS OF THE SOUTH CAROLINA
UNFAIR TRADE PRACTICES ACT**

(S.C. Code Ann. § 39-5-10, *et seq.*)

2473. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

2474. Defendants are “persons” under S.C. CODE ANN. § 39-5-10.

2475. Defendants both participated in unfair or deceptive acts or practices that violated the South Carolina Unfair Trade Practices Act (the “Act”), S.C. CODE ANN. § 39-5-10, *et seq.*, as described above and below. Defendants each are directly liable for these violations of law. TMC also is liable for TMS’s violations of the Act because TMS acts as TMC’s general agent in the United States for purposes of sales and marketing.

2476. By failing to disclose and actively concealing the dangerous risk of throttle control failure and the lack of adequate fail-safe mechanisms in Defective Vehicles equipped with ETCS, Defendants engaged in unfair or deceptive practices prohibited by the Act, S.C. CODE ANN. § 39-5-10, *et seq.*, including (1) representing that Defective Vehicles have characteristics, uses, benefits, and qualities which they do not have, (2) representing that Defective Vehicles are of a particular standard, quality, and grade when they are not, (3) advertising Defective Vehicles with the intent not to sell them as advertised, (4) representing that a transaction involving Defective Vehicles confers or involves rights, remedies, and obligations which it does not, and (5) representing that the subject of a transaction involving Defective

1 Vehicles has been supplied in accordance with a previous representation when it has
2 not.

3 2477. As alleged above, Defendants made numerous material statements about
4 the safety and reliability of Defective Vehicles that were either false or misleading.
5 Each of these statements contributed to the deceptive context of TMC's and TMS's
6 unlawful advertising and representations as a whole.
7

8 2478. Defendants knew that the ETCS in Defective Vehicles was defectively
9 designed or manufactured, would fail without warning, and was not suitable for its
10 intended use of regulating throttle position and vehicle speed based on driver
11 commands. Defendants nevertheless failed to warn Plaintiffs about these inherent
12 dangers despite having a duty to do so.
13

14 2479. Defendants each owed Plaintiffs a duty to disclose the defective nature
15 of Defective Vehicles, including the dangerous risk of throttle control failure, the
16 ETCS defects, and the lack of adequate fail-safe mechanisms, because they:

17 2480. Possessed exclusive knowledge of the defects rendering Defective
18 Vehicles inherently more dangerous and unreliable than similar vehicles;
19

20 2481. Intentionally concealed the hazardous situation with Defective Vehicles
21 through their deceptive marketing campaign and recall program that they designed to
22 hide the life-threatening problems from Plaintiffs; and/or

23 2482. Made incomplete representations about the safety and reliability of
24 Defective Vehicles generally, and ETCS in particular, while purposefully
25 withholding material facts from Plaintiffs that contradicted these representations.
26

27 2483. Defective Vehicles equipped with ETCS pose an unreasonable risk of
28 death or serious bodily injury to Plaintiffs, passengers, other motorists, pedestrians,

1 and the public at large, because they are susceptible to incidents of sudden
2 unintended acceleration.

3 2484. Whether or not a vehicle (a) accelerates only when commanded to do so
4 and (b) decelerates and stops when commanded to do so are facts that a reasonable
5 consumer would consider important in selecting a vehicle to purchase or lease.
6 When Plaintiffs bought a Toyota Vehicle for personal, family, or household
7 purposes, they reasonably expected the vehicle would (a) not accelerate unless
8 commanded to do so by application of the accelerator pedal or other driver controlled
9 means; (b) decelerate to a stop when the brake pedal was applied, and was equipped
10 with any necessary fail-safe mechanisms including a brake-override.
11

12 2485. TMC's and TMS's unfair or deceptive trade practices were likely to and
13 did in fact deceive reasonable consumers, including Plaintiffs, about the true safety
14 and reliability of Defective Vehicles.
15

16 2486. As a result of its violations of the Act detailed above, Defendants
17 caused actual damage to Plaintiffs and, if not stopped, will continue to harm
18 Plaintiffs. Plaintiffs currently own or lease, or within the class period have owned or
19 leased, Defective Vehicles that are defective and inherently unsafe. ETCS defects
20 and the resulting unintended acceleration incidents have caused the value of
21 Defective Vehicles to plummet.
22

23 2487. Plaintiffs risk irreparable injury as a result of TMC's and TMS's acts
24 and omissions in violation of the Act, and these violations present a continuing risk
25 to Plaintiffs as well as to the general public.
26

27 2488. Pursuant to S.C. CODE ANN. § 39-5-140, Plaintiffs seek monetary relief
28 against TMS and TMC to recover for their sustained losses.

1 2489. Plaintiffs further allege that Defendants' malicious and deliberate
2 conduct warrants an assessment of punitive damages because Defendants each
3 carried out despicable conduct with willful and conscious disregard of the rights and
4 safety of others, subjecting Plaintiffs to cruel and unjust hardship as a result.
5 Defendants intentionally and willfully misrepresented the safety and reliability of
6 Defective Vehicles, deceived Plaintiffs on life-or-death matters, and concealed
7 material facts that only they knew, all to avoid the expense and public relations
8 nightmare of correcting a deadly flaw in the Defective Vehicles they repeatedly
9 promised Plaintiffs were safe. Defendants' unlawful conduct constitutes malice,
10 oppression, and fraud warranting punitive damages.
11

12 2490. The recalls and repairs instituted by Toyota have not been adequate.
13 Defective Vehicles still are defective and the "confidence" booster offer of an
14 override is not an effective remedy and is not offered to all Defective Vehicles,
15 including the 2002-2007 Camry.
16

17 2491. Plaintiffs further seek an order enjoining Defendants' unfair or
18 deceptive acts or practices, restitution, punitive damages, costs of Court, attorney's
19 fees, and any other just and proper relief available under the Act.
20

21 **COUNT IV**

22 **VIOLATIONS OF THE SOUTH CAROLINA REGULATION OF**
23 **MANUFACTURERS, DISTRIBUTORS, AND DEALERS ACT**

24 **(S.C. Code Ann. § 56-15-10, *et seq.*)**

25 2492. Plaintiffs reallege and incorporate by reference all paragraphs as though
26 fully set forth herein.
27
28

1 2493. Defendants are “manufacturers” as set forth in S.C. CODE ANN. § 56-15-
2 10, as they are engaged in the business of manufacturing or assembling new and
3 unused motor vehicles.

4 2494. Defendants both participated in unfair or deceptive acts or practices that
5 violated the South Carolina Regulation of Manufacturers, Distributors, and Dealers
6 Act (“Dealers Act”), S.C. CODE ANN. § 56-15-30. Defendants each are directly
7 liable for these violations of law. TMC also is liable for TMS’s violations of the
8 Dealers Act because TMS acts as TMC’s general agent in the United States for
9 purposes of sales and marketing.
10

11 2495. Defendants have engaged in actions which were arbitrary, in bad faith,
12 unconscionable, and which caused damage to Plaintiffs, the Class, and to the public.
13 Defendants have directly participated in the wrongful conduct.
14

15 2496. Defendants’ bad faith and unconscionable actions include, but are not
16 limited to: (1) representing that Defective Vehicles have characteristics, uses,
17 benefits, and qualities which they do not have, (2) representing that Defective
18 Vehicles are of a particular standard, quality, and grade when they are not,
19 (3) advertising Defective Vehicles with the intent not to sell them as advertised,
20 (4) representing that a transaction involving Defective Vehicles confers or involves
21 rights, remedies, and obligations which it does not, and (5) representing that the
22 subject of a transaction involving Defective Vehicles has been supplied in
23 accordance with a previous representation when it has not.
24

25 2497. Defendants have resorted to and used false and misleading
26 advertisement in connection with their business. As alleged above, Defendants made
27 numerous material statements about the safety and reliability of Defective Vehicles
28

1 that were either false or misleading. Each of these statements contributed to the
2 deceptive context of TMC's and TMS's unlawful advertising and representations as
3 a whole.

4 2498. Pursuant to S.C. CODE ANN. § 56-15-110(2), Plaintiffs bring this action
5 on behalf of themselves and the Class, as the action is one of common or general
6 interest to many persons and the parties are too numerous to bring them all before the
7 court.
8

9 2499. Plaintiffs and the Class are entitled to double the actual damages, the
10 cost of the suit, attorney's fees pursuant to S.C. CODE ANN. § 56-15-110, and
11 Plaintiffs also seek injunctive relief under S.C. CODE ANN. § 56-15-110. Plaintiffs
12 also seek treble damages because Defendants have acted maliciously.
13

14 **COUNT V**

15 **BREACH OF CONTRACT/COMMON LAW WARRANTY**

16 **(Based On South Carolina Law)**

17 2500. Plaintiffs reallege and incorporate by reference all paragraphs as though
18 fully set forth herein.
19

20 2501. To the extent Toyota's repair or adjust commitment is deemed not to be
21 a warranty under South Carolina's Commercial Code, Plaintiffs plead in the
22 alternative under common law warranty and contract law. Toyota limited the
23 remedies available to Plaintiffs and the Class to just repairs and adjustments needed
24 to correct defects in materials or workmanship of any part supplied by Toyota,
25 and/or warranted the quality or nature of those services to Plaintiffs.
26
27
28

2503. As a direct and proximate result of Defendants' breach of contract or common law warranty, Plaintiffs and the Class have been damaged in an amount to be proven at trial, which shall include, but is not limited to, all compensatory damages, incidental and consequential damages, and other damages allowed by law.

SOUTH DAKOTA

BREACH OF EXPRESS WARRANTY

2504. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

2506. Under S.D. CODIFIED LAWS § 57A-2-318, Plaintiffs have the same standing as any direct purchaser of a vehicle from Toyota.

2508. Toyota breached the express warranty to repair and adjust to correct defects in materials and workmanship of any part supplied by Toyota. Toyota has not repaired or adjusted, and has been unable to repair or adjust, the Vehicles' materials and workmanship defects.

1 2509. In addition to this Basic Warranty, Toyota expressly warranted several
2 attributes, characteristics and qualities, as set forth above.

3 2510. These warranties are only a sampling of the numerous warranties that
4 Toyota made relating to safety, reliability and operation, which are more fully
5 outlined in Section IV.A., *supra*. Generally these express warranties promise
6 heightened, superior, and state-of-the-art safety, reliability, performance standards,
7 and promote the benefits of ETCS. These warranties were made, *inter alia*, in
8 advertisements, in Toyota's "e brochures," and in uniform statements provided by
9 Toyota to be made by salespeople. These affirmations and promises were part of the
10 basis of the bargain between the parties.
11

12 2511. These additional warranties were also breached because the Defective
13 Vehicles were not fully operational, safe, or reliable (and remained so even after the
14 problems were acknowledged and a recall "fix" was announced), nor did they
15 comply with the warranties expressly made to purchasers or lessees. Toyota did not
16 provide at the time of sale, and has not provided since then, vehicles conforming to
17 these express warranties.
18

19 2512. Furthermore, the limited warranty of repair and/or adjustments to
20 defective parts, fails in its essential purpose because the contractual remedy is
21 insufficient to make the Plaintiffs and the Class whole and because the Defendants
22 have failed and/or have refused to adequately provide the promised remedies within
23 a reasonable time.
24

25 2513. Accordingly, recovery by the Plaintiffs is not limited to the limited
26 warranty of repair or adjustments to parts defective in materials or workmanship, and
27 Plaintiffs seek all remedies as allowed by law.
28

1 2514. Also, as alleged in more detail herein, at the time that Defendants
2 warranted and sold the vehicles they knew that the vehicles did not conform to the
3 warranties and were inherently defective, and Defendants wrongfully and
4 fraudulently misrepresented and/or concealed material facts regarding their vehicles.
5 Plaintiffs and the Class were therefore induced to purchase the vehicles under false
6 and/or fraudulent pretenses.
7

8 2515. Moreover, many of the damages flowing from the Defective Vehicles
9 cannot be resolved through the limited remedy of “replacement or adjustments,” as
10 those incidental and consequential damages have already been suffered due to
11 Defendants’ fraudulent conduct as alleged herein, and due to their failure and/or
12 continued failure to provide such limited remedy within a reasonable time, and any
13 limitation on Plaintiffs’ and the Class’ remedies would be insufficient to make
14 Plaintiffs and the Class whole.
15

16 2516. Finally, due to the Defendants’ breach of warranties as set forth herein,
17 Plaintiffs and the Class assert as an additional and/or alternative remedy, as set forth
18 in S.D. CODIFIED LAWS § 57A-2-608, for a revocation of acceptance of the goods,
19 and for a return to Plaintiffs and to the Class of the purchase price of all vehicles
20 currently owned.
21

22 2517. Toyota was provided notice of these issues by numerous complaints
23 filed against it, including the instant complaint, and by numerous individual letters
24 and communications sent by Plaintiffs and the Class before or within a reasonable
25 amount of time after Toyota issued the recall and the allegations of vehicle defects
26 became public.
27
28

COUNT II

(S.D. Codified Laws § 57A-2-314)

2520. Toyota is and was at all relevant times a merchant with respect to motor vehicles.

2522. Under S.D. CODIFIED LAWS § 57A-2-318, Plaintiffs have the same standing as any direct purchaser of a vehicle from Toyota.

2524. As a direct and proximate result of Toyota's breach of the warranties of merchantability, Plaintiffs and the Class have been damaged in an amount to be proven at trial.

COUNT III

UNJUST ENRICHMENT

(Based On South Dakota Law)

2525. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

2526. Toyota had knowledge of the safety defects in its vehicles, which it failed to disclose to Plaintiffs and the Class.

2527. As a result of their wrongful and fraudulent acts and omissions, as set forth above, pertaining to the design defect of their vehicles and the concealment of the defect, Toyota charged a higher price for their vehicles than the vehicles' true value and Toyota received such higher price as a benefit.

2528. As a result of their wrongful and fraudulent acts and omissions, as set forth above, pertaining to the design defect of their vehicles and the concealment of the defect, Toyota charged a higher price for their vehicles than the vehicles' true value and Toyota knew that it had received such higher price as benefit.

2529. As a result of their wrongful and fraudulent acts and omissions, as set forth above, pertaining to the design defect of their vehicles and the concealment of the defect, Toyota was able to charge a higher price for their vehicles than the vehicles' true value, and the benefit it received as a result unjustly enriches Toyota unless and until such benefit is reimbursed to Plaintiff.

2530. No justification exists for Toyota to keep such benefit without reimbursing it to Plaintiffs.

COUNT IV

**VIOLATION OF THE SOUTH DAKOTA
DECEPTIVE TRADE PRACTICES ACT**

(S.D. Codified Laws § 37-24-6)

2531. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

2532. The conduct of Toyota as set forth herein constitutes deceptive acts or practices, fraud, and misrepresentation, including, but not limited to, Toyota's manufacture and sale of vehicles with a sudden acceleration defect that lack brake-override or other effective fail-safe mechanisms which Toyota failed to adequately investigate, disclose and remedy, and Toyota's misrepresentations and omissions regarding the safety and reliability of its vehicles.

2533. Plaintiffs and the Class were injured as a result of Defendant's conduct. Plaintiffs overpaid for their Defective Vehicles and did not receive the benefit of their bargain, and their vehicles have suffered a diminution in value.

2534. Toyota's conduct proximately caused the injuries to Plaintiffs and the Class.

2535. Under S.D. CODIFIED LAWS § 37-24-31, Plaintiffs and the Class are entitled to a recovery of their actual damages suffered as a result of Toyota's acts and practices.

COUNT V

REVOCATION OF ACCEPTANCE

(S.D. Codified Laws § 57A-2-608)

2536. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

2537. Plaintiffs identified above demanded revocation and the demands were refused.

2538. Plaintiffs and the Class had no knowledge of such defects and nonconformities, were unaware of these defects, and reasonably could not have discovered them when they purchased or leased their automobiles from Toyota. On the other hand, Toyota was aware of the defects and nonconformities at the time of sale and thereafter.

2539. Acceptance was reasonably induced by the difficulty of discovery of the defects and nonconformities before acceptance.

2540. There has been no change in the condition of Plaintiffs' vehicles not caused by the defects and nonconformities.

2541. When Plaintiffs sought to revoke acceptance, Toyota refused to accept return of the Defective Vehicles and to refund Plaintiffs' purchase price and monies paid.

2542. Plaintiffs and the Class would suffer economic hardship if they returned their vehicles but did not receive the return of all payments made by them. Because Toyota is refusing to acknowledge any revocation of acceptance and return immediately any payments made, Plaintiffs and the Class have not re-accepted their Defective Vehicles by retaining them.

1 2543. These defects and nonconformities substantially impaired the value of
2 the Defective Vehicles to Plaintiffs and the Class. This impairment stems from two
3 basic sources. First, the Defective Vehicles fail in their essential purpose because
4 they present an unreasonably high risk of sudden unintended acceleration (a risk
5 acknowledged by Toyota's recall), rendering them unsafe in a very material way.
6 Second, the repair and adjust warranty has failed of its essential purpose because
7 Toyota cannot repair or adjust the Defective Vehicles.
8

9 2544. Plaintiffs and the Class provided notice of their intent to seek revocation
10 of acceptance by a class-action lawsuit seeking such relief. In addition, Plaintiffs
11 (and many Class members) have requested that Toyota accept return of their vehicles
12 and return all payments made. Plaintiffs on behalf of themselves and the Class
13 hereby demand revocation and tender their Defective Vehicles.
14

15 2545. Plaintiffs and the Class would suffer economic hardship if they returned
16 their vehicles but did not receive the return of all payments made by them. Because
17 Toyota is refusing to acknowledge any revocation of acceptance and return
18 immediately any payments made, Plaintiffs and the Class have not re-accepted their
19 Defective Vehicles by retaining them, as they must continue using them due to the
20 financial burden of securing alternative means of transport for an uncertain and
21 substantial period of time.
22

23 2546. Finally, due to the Defendants' breach of warranties as set forth herein,
24 Plaintiffs and the Class assert as an additional and/or alternative remedy for a
25 revocation of acceptance of the goods, and for a return to Plaintiffs and to the Class
26 of the purchase price of all vehicles currently owned.
27
28

1 2547. Consequently, Plaintiffs and the Class are entitled to revoke their
2 acceptances, receive all payments made to Toyota, and to all incidental and
3 consequential damages, including the costs associated with purchasing safer vehicles,
4 and all other damages allowable under law, all in amounts to be proven at trial.
5

6 **COUNT VI**

7 **BREACH OF CONTRACT/COMMON LAW WARRANTY**

8 **(Based On South Dakota Law)**

9 2548. Plaintiffs reallege and incorporate by reference all paragraphs as though
10 fully set forth herein.

11 2549. To the extent Toyota's repair or adjust commitment is deemed not to be
12 a warranty under South Dakota's Codified Laws, Plaintiffs plead in the alternative
13 under common law warranty and contract law. Toyota limited the remedies
14 available to Plaintiffs and the Class to just repairs and adjustments needed to correct
15 defects in materials or workmanship of any part supplied by Toyota, and/or
16 warranted the quality or nature of those services to Plaintiffs.
17

18 2550. Toyota breached this warranty or contract obligation by failing to repair
19 the Defective Vehicles evidencing a sudden unintended acceleration problem,
20 including those that were recalled, or to replace them.
21

22 2551. As a direct and proximate result of Defendants' breach of contract or
23 common law warranty, Plaintiffs and the Class have been damaged in an amount to
24 be proven at trial, which shall include, but is not limited to, all compensatory
25 damages, incidental and consequential damages, and other damages allowed by law.
26
27
28

TENNESSEE

COUNT I

VIOLATION OF TENNESSEE CONSUMER PROTECTION ACT

(Tenn. Code Ann. § 47-18-101, *et seq.*)

2552. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

2553. Defendants misrepresented the safety of the Defective Vehicles after learning of their defects with the intent that Plaintiffs relied on such representations in their decision regarding the purchase, lease and/or use of the Defective Vehicles.

2554. Plaintiffs did, in fact, rely on such representations in their decision regarding the purchase, lease and/or use of the Defective Vehicles.

2555. Through these misleading and deceptive statements and false promises, Defendants violated the Tennessee Consumer Protection Act.

2556. The Tennessee Consumer Protection Act applies to Defendants' transactions with Plaintiffs because Defendants' deceptive scheme was carried out in Tennessee and affected Plaintiffs.

2557. Defendants also failed to advise the NHSTA and the public about what they knew about the sudden and unintended acceleration defects in the Defective Vehicles.

2558. Plaintiffs relied on Defendants' silence as to known defects in connection with their decision regarding the purchase, lease and/or use of the Defective Vehicles.

2559. As a direct and proximate result of Defendants' deceptive conduct and violation of the Tennessee Consumer Protection Act, Plaintiffs have sustained and

1 will continue to sustain economic losses and other damages for which they are
2 entitled to compensatory and equitable damages and declaratory relief in an amount
3 to be proven at trial.

4
5 **COUNT II**

6 **FRAUDULENT MISREPRESENTATION &**
7 **FRAUDULENT CONCEALMENT**

8 **(Based On Tennessee Law)**

9 2560. Plaintiffs reallege and incorporate by reference all paragraphs as though
10 fully set forth herein.

11 2561. As described above, Defendants made material omissions and
12 affirmative misrepresentations regarding the Defective Vehicles.

13 2562. Defendants knew these representations were false when made.

14 2563. The vehicles purchased or leased by Plaintiffs were, in fact, defective,
15 unsafe and unreliable, because the vehicles were subject to sudden, extreme
16 acceleration without adequate fail-safe mechanisms.

17 2564. Toyota had a duty to disclose that these vehicles were defective, unsafe
18 and unreliable in that the vehicles were subject to sudden, extreme acceleration
19 without adequate fail-safe mechanisms because Plaintiffs relied on Toyota's
20 representations that the vehicles they were purchasing were safe and free from
21 defects.
22

23 2565. The aforementioned concealment was material because if it had been
24 disclosed Plaintiffs would not have bought or leased the vehicles.
25

26 2566. The aforementioned representations were material because they were
27 facts that would typically be relied on by a person purchasing or leasing a new motor
28

1 vehicle. Toyota knew or recklessly disregarded that its representations were false
2 because it knew that people had died in its vehicles' unintended acceleration between
3 2002 and 2009. Toyota intentionally made the false statements in order to sell
4 vehicles.

5
6 2567. Plaintiffs relied on Toyota's reputation – along with Toyota's failure to
7 disclose the acceleration problems and Toyota's affirmative assurance that its
8 vehicles were safe and reliable and other similar false statements – in purchasing or
9 leasing Toyota's vehicles.

10 2568. As a result of their reliance, Plaintiffs have been injured in an amount to
11 be proven at trial, including, but not limited to, their lost benefit of the bargain and
12 overpayment at the time of purchase and/or the diminished value of their vehicles.

13
14 2569. Defendants' conduct was knowing, intentional, with malice,
15 demonstrated a complete lack of care, and was in reckless disregard for the rights of
16 Plaintiffs. Plaintiffs are therefore entitled to an award of punitive damages.

17
18 **COUNT III**

19 **BREACH OF EXPRESS WARRANTY**

20 **(Tenn. Code Ann. § 47-2-313)**

21 2570. Plaintiffs reallege and incorporate by reference all paragraphs as though
22 fully set forth herein.

23 2571. Defendants are and at all relevant times were sellers as defined by
24 TENN. CODE ANN. § 47-2-103.

25 2572. Defendants expressly affirmed – through uniform statements, “e-
26 brochures” and advertisements described above – that the vehicles were of high
27
28

1 quality, and, at a minimum, would actually work properly and safely. These
2 affirmations became part of the basis of the bargain.

3 2573. Defendants breached this warranty by knowingly selling to Plaintiffs
4 vehicles with dangerous defects, and which were not of high quality.

5 2574. Plaintiffs have been damaged as a direct and proximate result of the
6 breaches by Defendants in that the Defective Vehicles purchased by Plaintiffs were
7 and are worth far less than what the Plaintiffs paid to purchase, which was
8 reasonably foreseeable to Defendants.

9 2575. Plaintiffs were unaware of these defects and could not have reasonably
10 discovered them when they purchased their vehicles from Toyota.

11 2576. Plaintiffs and the Class are entitled to damages, including the
12 diminished value of their vehicles and the value of the non-use of the vehicles
13 pending successful repair, in addition to any costs associated with purchasing safer
14 vehicles, incidental and consequential damages, and all other damages allowable
15 under the law, including such further relief as the Court deems just and proper.

16 **COUNT IV**

17 **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**

18 **(Tenn. Code Ann. § 47-2-314)**

19 2577. Plaintiffs reallege and incorporate by reference all paragraphs as though
20 fully set forth herein.

21 2578. Defendants impliedly warranted that their vehicles were of good and
22 merchantable quality and fit, and safe for their ordinary intended use – transporting
23 the driver and passengers in reasonable safety during normal operation, and without
24 unduly endangering them or members of the public.

1 2585. Further, Plaintiffs paid Toyota for vehicles they could operate, and in
2 exchange, Toyota provided Plaintiffs vehicles that could not be normally operated
3 because their defects posed the possibility of life-threatening injuries or death.

4 2586. As such, Plaintiffs conferred a windfall upon Toyota, which knows of
5 the windfall and has retained such benefits, which would be unjust for Toyota to
6 retain.

7
8 2587. As a direct and proximate result of Toyota's unjust enrichment,
9 Plaintiffs have suffered and continue to suffer various damages, including, but not
10 limited to, restitution of all amounts by which Defendants were enriched through
11 their misconduct.

12
13 **TEXAS**

14 **COUNT I**

15 **VIOLATIONS OF THE TEXAS DECEPTIVE TRADE PRACTICES ACT**

16 **(Tex. Bus. & Com. Code §§ 17.41, *et seq.*)**

17 2588. Plaintiffs reallege and incorporate by reference all paragraphs as though
18 fully set forth herein.

19 2589. Defendants' above-described acts and omissions constitute false,
20 misleading or deceptive acts or practices under the Texas Deceptive Trade Practices–
21 Consumer Protection Act, TEX. BUS. & COM. CODE § 17.41, *et seq.* (“Texas DTPA”).

22 2590. By failing to disclose and actively concealing the dangerous risk of
23 throttle control failure and the lack of adequate fail-safe mechanisms in Defective
24 Vehicles equipped with ETCS, Defendants engaged in deceptive business practices
25 prohibited by the Texas DTPA, including (1) representing that Defective Vehicles
26 have characteristics, uses, benefits, and qualities which they do not have,
27
28

1 (2) representing that Defective Vehicles are of a particular standard, quality, and
2 grade when they are not, (3) advertising Defective Vehicles with the intent not to sell
3 them as advertised, (4) representing that a transaction involving Defective Vehicles
4 confers or involves rights, remedies, and obligations which it does not, and
5 (5) failing to disclose information concerning Defective Vehicles with the intent to
6 induce consumers to purchase or lease the Defective Vehicles.
7

8 2591. As alleged above, Defendants made numerous material statements about
9 the safety and reliability of Defective Vehicles that were either false or misleading.
10 Each of these statements contributed to the deceptive context of TMC's and TMS's
11 unlawful advertising and representations as a whole.
12

13 2592. Defendants' unfair or deceptive acts or practices were likely to and did
14 in fact deceive reasonable consumers, including Plaintiffs, about the true safety and
15 reliability of Defective Vehicles.

16 2593. In purchasing or leasing their vehicles, the Plaintiffs relied on the
17 misrepresentations and/or omissions of Toyota with respect of the safety and
18 reliability of the vehicles. Toyota's representations turned out not to be true because
19 the vehicles can unexpectedly and dangerously accelerate out of the drivers' control.
20 Had the Named Plaintiffs known this they would not have purchased or leased their
21 Defective Vehicles and/or paid as much for them.
22

23 2594. Defendants also breached express and implied warranties to Plaintiffs
24 and the Class, as set out above, and are, therefore liable to Plaintiffs and the Class for
25 damages under §§ 17.50(a)(2) and 17.50(b) of the Texas DTPA. Defendants'
26 actions also constitute an unconscionable action or course of action under
27 § 17.50(a)(3) of the Texas DTPA.
28

2596. For those Plaintiffs and the Class who wish to rescind their purchases, they are entitled under § 17.50(b)(4) to rescission and other relief necessary to restore any money or property that was acquired from them based on violations of the Texas DTPA.

COUNT II

2598. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

2600. In the course of selling its vehicles, Toyota expressly warranted in writing that the Vehicles were covered by a Basic Warranty.

1 2602. In addition to this Basic Warranty, Toyota expressly warranted several
2 attributes, characteristics and qualities as set forth above.

3 2603. These warranties are only a sampling of the numerous warranties that
4 Toyota made relating to safety, reliability and operation, which are more fully
5 outlined in Section IV.A., *supra*. Generally these express warranties promise
6 heightened, superior, and state-of-the-art safety, reliability, performance standards,
7 and promote the benefits of ETCS. These warranties were made, *inter alia*, in
8 advertisements, in Toyota's "e-brochures," and in uniform statements provided by
9 Toyota to be made by salespeople. These affirmations and promises were part of the
10 basis of the bargain between the parties.
11

12 2604. These additional warranties were also breached because the Defective
13 Vehicles were not fully operational, safe, or reliable (and remained so even after the
14 problems were acknowledged and a recall "fix" was announced), nor did they
15 comply with the warranties expressly made to purchasers or lessees. Toyota did not
16 provide at the time of sale, and has not provided since then, vehicles conforming to
17 these express warranties.
18

19 2605. Furthermore, the limited warranty of repair and/or adjustments to
20 defective parts, fails in its essential purpose because the contractual remedy is
21 insufficient to make the Plaintiffs and the Class whole and because the Defendants
22 have failed and/or have refused to adequately provide the promised remedies within
23 a reasonable time.
24

25 2606. Accordingly, recovery by the Plaintiffs is not limited to the limited
26 warranty of repair or adjustments to parts defective in materials or workmanship, and
27 Plaintiffs seek all remedies as allowed by law.
28

1 2607. Also, as alleged in more detail herein, at the time that Defendants
2 warranted and sold the vehicles they knew that the vehicles did not conform to the
3 warranties and were inherently defective, and Defendants wrongfully and
4 fraudulently misrepresented and/or concealed material facts regarding their vehicles.
5 Plaintiffs and the Class were therefore induced to purchase the vehicles under false
6 and/or fraudulent pretenses. The enforcement under these circumstances of any
7 limitations whatsoever precluding the recovery of incidental and/or consequential
8 damages is unenforceable.
9

10 2608. Moreover, many of the damages flowing from the Defective Vehicles
11 cannot be resolved through the limited remedy of “replacement or adjustments,” as
12 those incidental and consequential damages have already been suffered due to
13 Defendants’ fraudulent conduct as alleged herein, and due to their failure and/or
14 continued failure to provide such limited remedy within a reasonable time, and any
15 limitation on Plaintiffs’ and the Class’ remedies would be insufficient to make
16 Plaintiffs and the Class whole.
17

18 2609. Finally, due to the Defendants’ breach of warranties as set forth herein,
19 Plaintiffs and the Class assert as an additional and/or alternative remedy, as set forth
20 in TEX. BUS. & COM. CODE § 2.711, for a revocation of acceptance of the goods, and
21 for a return to Plaintiffs and to the Class of the purchase price of all vehicles
22 currently owned and for such other incidental and consequential damages as allowed
23 under TEX. BUS & COM. CODE §§ 2.711 and 2.608.
24

25 2610. Toyota was provided notice of these issues by numerous complaints
26 filed against it, including the instant complaint, and by numerous individual letters
27 and communications sent by Plaintiffs and the Class before or within a reasonable
28

1 amount of time after Toyota issued the recall and the allegations of vehicle defects
2 became public.

3 2611. As a direct and proximate result of Toyota's breach of express
4 warranties, Plaintiffs and the Class have been damaged in an amount to be
5 determined at trial.
6

7 **COUNT III**

8 **BREACH OF THE IMPLIED WARRANTY OF MERCHANTABILITY**

9 **(Tex. Bus. & Com. Code § 2.314)**

10 2612. Plaintiffs reallege and incorporate by reference all paragraphs as though
11 fully set forth herein.
12

13 2613. Toyota is and was at all relevant times a merchant with respect to motor
14 vehicles under TEX. BUS. & COM. CODE § 2.104.

15 2614. A warranty that the Defective Vehicles were in merchantable condition
16 was implied by law in the instant transaction, pursuant to TEX. BUS. & COM. CODE
17 § 2.314.

18 2615. These vehicles, when sold and at all times thereafter, were not in
19 merchantable condition and are not fit for the ordinary purpose for which cars are
20 used. Specifically, the Defective Vehicles are inherently defective in that there are
21 defects in the vehicle control systems that permit sudden unintended acceleration to
22 occur; the Defective Vehicles do not have an adequate fail-safe to protect against
23 such SUA events, nor do they have a brake-override; and the ETCS system was not
24 adequately tested.
25

26 2616. Toyota was provided notice of these issues by numerous complaints
27 filed against it, including the instant complaint, and by numerous individual letters
28

1 and communications sent by Plaintiffs and the Class before or within a reasonable
2 amount of time after Toyota issued the recall and the allegations of vehicle defects
3 became public

4 2617. As a direct and proximate result of Toyota's breach of the warranties of
5 merchantability, Plaintiffs and the Class have been damaged in an amount to be
6 proven at trial.
7

8 **COUNT IV**
9 **REVOCATION OF ACCEPTANCE**
10 **(Tex. Bus. & Com. Code § 2.608)**

11 2618. Plaintiffs reallege and incorporate by reference all paragraphs as though
12 fully set forth herein.
13

14 2619. Plaintiffs identified above demanded revocation and the demands were
15 refused.

16 2620. Plaintiffs and the Class had no knowledge of such defects and
17 nonconformities, were unaware of these defects, and reasonably could not have
18 discovered them when they purchased or leased their automobiles from Toyota. On
19 the other hand, Toyota was aware of the defects and nonconformities at the time of
20 sale and thereafter.
21

22 2621. Acceptance was reasonably induced by the difficulty of discovery of the
23 defects and nonconformities before acceptance.

24 2622. There has been no substantial change in the condition of Plaintiffs'
25 vehicles not caused by the defects and nonconformities.
26
27
28

1 2623. When Plaintiffs sought to revoke acceptance, Toyota refused to accept
2 return of the Defective Vehicles and to refund Plaintiffs' purchase price and monies
3 paid.

4 2624. Plaintiffs and the Class would suffer economic hardship if they returned
5 their vehicles but did not receive the return of all payments made by them. Because
6 Toyota is refusing to acknowledge any revocation of acceptance and return
7 immediately any payments made, Plaintiffs and the Class have not re-accepted their
8 Defective Vehicles by retaining them.

9 2625. These defects and nonconformities substantially impaired the value of
10 the Defective Vehicles to Plaintiffs and the Class. This impairment stems from two
11 basic sources. First, the Defective Vehicles fail in their essential purpose because
12 they present an unreasonably high risk of sudden unintended acceleration (a risk
13 acknowledged by Toyota's recall), rendering them unsafe in a very material way.
14 Second, the repair and adjust warranty has failed of its essential purpose because
15 Toyota cannot repair or adjust the Defective Vehicles.

16 2626. Plaintiffs and the Class provided notice of their intent to seek revocation
17 of acceptance by a class-action lawsuit seeking such relief. In addition, Plaintiffs
18 (and many Class members) have requested that Toyota accept return of their vehicles
19 and return all payments made. Plaintiffs on behalf of themselves and the Class
20 hereby demand revocation and tender their Defective Vehicles.

21 2627. Plaintiffs and the Class would suffer economic hardship if they returned
22 their vehicles but did not receive the return of all payments made by them. Because
23 Toyota is refusing to acknowledge any revocation of acceptance and return
24 immediately any payments made, Plaintiffs and the Class have not re-accepted their

1 Defective Vehicles by retaining them, as they must continue using them due to the
2 financial burden of securing alternative means of transport for an uncertain and
3 substantial period of time.

4 2628. Finally, due to the Defendants' breach of warranties as set forth herein,
5 Plaintiffs and the Class assert as an additional and/or alternative remedy, as set forth
6 in TEX. BUS. & COM. CODE § 2.711, for a revocation of acceptance of the goods, and
7 for a return to Plaintiffs and to the Class of the purchase price of all vehicles
8 currently owned and for such other incidental and consequential damages as allowed
9 under TEX. BUS. & COM. CODE § 2.711.
10

11 2629. Consequently, Plaintiffs and the Class are entitled to revoke their
12 acceptances, receive all payments made to Toyota, and to all incidental and
13 consequential damages, including the costs associated with purchasing safer
14 vehicles, and all other damages allowable under law, all in amounts to be proven at
15 trial.
16

17 **COUNT V**

18 **BREACH OF CONTRACT/Common Law Warranty**

19 **(Based On Texas Law)**

20 2630. Plaintiffs reallege and incorporate by reference all paragraphs as though
21 fully set forth herein.
22

23 2631. To the extent Toyota's repair or adjust commitment is deemed not to be
24 a warranty under the Texas Business and Commerce Code, Plaintiffs plead in the
25 alternative under common law warranty and contract law. Toyota limited the
26 remedies available to Plaintiffs and the Class to just repairs and adjustments needed
27
28

1 to correct defects in materials or workmanship of any part supplied by Toyota,
2 and/or warranted the quality or nature of those services to Plaintiffs.

3 2632. Toyota breached this warranty or contract obligation by failing to repair
4 the Defective Vehicles evidencing a sudden unintended acceleration problem,
5 including those that were recalled, or to replace them.
6

7 2633. As a direct and proximate result of Defendants' breach of contract or
8 common law warranty, Plaintiffs and the Class have been damaged in an amount to
9 be proven at trial, which shall include, but is not limited to, all compensatory
10 damages, incidental and consequential damages, and other damages allowed by law.
11

12 **COUNT VI**

13 **FRAUD BY CONCEALMENT**

14 **(Based On Texas Law)**

15 2634. Plaintiffs reallege and incorporate by reference all paragraphs as though
16 fully set forth herein.

17 2635. As set forth above, Defendants concealed and/or suppressed material
18 facts concerning the safety of their vehicles.
19

20 2636. Defendants had a duty to disclose these safety issues because they
21 consistently marketed their vehicles as safe and proclaimed that safety is one of
22 Toyota's highest corporate priorities. Once Defendants made representations to the
23 public about safety, Defendants were under a duty to disclose these omitted facts,
24 because where one does speak one must speak the whole truth and not conceal any
25 facts which materially qualify those facts stated. One who volunteers information
26 must be truthful, and the telling of a half-truth calculated to deceive is fraud.
27
28

1 2637. In addition, Defendants had a duty to disclose these omitted material
2 facts because they were known and/or accessible only to Defendants who have
3 superior knowledge and access to the facts, and Defendants knew they were not
4 known to or reasonably discoverable by Plaintiffs and the Class. These omitted facts
5 were material because they directly impact the safety of the Defective Vehicles.
6 Whether or not a vehicle accelerates only at the driver's command, and whether a
7 vehicle will stop or not upon application of the brake by the driver, are material
8 safety concerns. Defendants possessed exclusive knowledge of the defects rendering
9 Defective Vehicles inherently more dangerous and unreliable than similar vehicles.
10

11 2638. Defendants were deliberately silent and actively concealed and/or
12 suppressed these material facts, in whole or in part, with the intent to induce
13 Plaintiffs and the Class to purchase Defective Vehicles at a higher price for the
14 vehicles, which did not match the vehicles' true value.
15

16 2639. Defendants still have not made full and adequate disclosure and
17 continue to defraud Plaintiffs and the Class.
18

19 2640. Plaintiffs and the Class were unaware of these omitted material facts
20 and would not have acted as they did if they had known of the concealed and/or
21 suppressed facts. Plaintiffs' and the Class' actions were reasonable and justified.
22 Defendants were in exclusive control of the material facts and such facts were not
23 known to the public or the Class.
24

25 2641. As a result of the concealment and/or suppression of the facts, Plaintiffs
26 and the Class sustained damage. For those Plaintiffs and the Class who elect to
27 affirm the sale, these damages include the difference between the actual value of that
28 which Plaintiffs and the Class paid and the actual value of that which they received,

1 together with additional damages arising from the sales transaction, amounts
2 expended in reliance upon the fraud, compensation for loss of use and enjoyment of
3 the property, and/or lost profits. For those Plaintiffs and the Class who want to
4 rescind the purchase, then those Plaintiffs and the Class are entitled to restitution and
5 consequential damages.
6

7 2642. Defendants' acts were done maliciously, oppressively, deliberately, with
8 intent to defraud, and in reckless disregard of Plaintiffs' and the Class' rights and
9 well-being to enrich Defendants. Defendants' conduct warrants an assessment of
10 punitive damages in an amount sufficient to deter such conduct in the future, which
11 amount is to be determined according to proof.
12

13 **COUNT VII**
14 **UNJUST ENRICHMENT**
15 **(Based On Texas Law)**

16 2643. Plaintiffs reallege and incorporate by reference all paragraphs as though
17 fully set forth herein.
18

19 2644. As a result of their wrongful and fraudulent acts and omissions, as set
20 forth above, pertaining to the design defect of their vehicles and the concealment of
21 the defect, Defendants charged a higher price for their vehicles than the vehicles'
22 true value and Defendants obtained monies which rightfully belong to Plaintiffs.
23

24 2645. Defendants enjoyed the benefit of increased financial gains, to the
25 detriment of Plaintiffs and the Class, who paid a higher price for vehicles which
26 actually had lower values. It would be inequitable, unjust, and unconscionable for
27 Defendants to retain these wrongfully obtained profits.
28

1 Toyota to be made by salespeople. These affirmations and promises were part of the
2 basis of the bargain between the parties.

3 2653. These additional warranties were also breached because the Defective
4 Vehicles were not fully operational, safe, or reliable (and remained so even after the
5 problems were acknowledged and a recall “fix” was announced), nor did they
6 comply with the warranties expressly made to purchasers or lessees. Toyota did not
7 provide at the time of sale, and has not provided since then, vehicles conforming to
8 these express warranties.
9

10 2654. Furthermore, the limited warranty of repair and/or adjustments to
11 defective parts, fails in its essential purpose because the contractual remedy is
12 insufficient to make the Plaintiffs and the Class whole and because the Defendants
13 have failed and/or have refused to adequately provide the promised remedies within
14 a reasonable time.
15

16 2655. Accordingly, recovery by the Plaintiffs is not limited to the limited
17 warranty of repair or adjustments to parts defective in materials or workmanship, and
18 Plaintiffs seek all remedies as allowed by law.
19

20 2656. Also, as alleged in more detail herein, at the time that Defendants
21 warranted and sold the vehicles they knew that the vehicles did not conform to the
22 warranties and were inherently defective, and Defendants wrongfully and
23 fraudulently misrepresented and/or concealed material facts regarding their vehicles.
24 Plaintiffs and the Class were therefore induced to purchase the vehicles under false
25 and/or fraudulent pretenses.
26

27 2657. Moreover, many of the damages flowing from the Defective Vehicles
28 cannot be resolved through the limited remedy of “replacement or adjustments,” as

1 those incidental and consequential damages have already been suffered due to
2 Defendants' fraudulent conduct as alleged herein, and due to their failure and/or
3 continued failure to provide such limited remedy within a reasonable time, and any
4 limitation on Plaintiffs' and the Class' remedies would be insufficient to make
5 Plaintiffs and the Class whole.
6

7 2658. Finally, due to the Defendants' breach of warranties as set forth herein,
8 Plaintiffs and the Class assert as an additional and/or alternative remedy, as set forth
9 in U.C.A. § 70A-2-608 for a revocation of acceptance of the goods, and for a return
10 to Plaintiffs and to the Class of the purchase price of all vehicles currently.
11

12 2659. Toyota was provided notice of these issues by numerous complaints
13 filed against it, including the instant complaint, and by numerous individual letters
14 and communications sent by Plaintiffs and the Class before or within a reasonable
15 amount of time after Toyota issued the recall and the allegations of vehicle defects
16 became public.
17

18 2660. As a direct and proximate result of Toyota's breach of express
19 warranties, Plaintiffs and the Class have been damaged in an amount to be
20 determined at trial.
21

22 **COUNT II**

23 **BREACH OF THE IMPLIED WARRANTY OF MERCHANTABILITY**

24 **(Utah Code Ann. § 70A-2-314)**

25 2661. Plaintiffs reallege and incorporate by reference all paragraphs as though
26 fully set forth herein.
27

28 2662. Toyota is and was at all relevant times a merchant with respect to motor
vehicles.

1 2663. A warranty that the Defective Vehicles were in merchantable condition
2 was implied by law in the instant transactions.

3 2664. These vehicles, when sold and at all times thereafter, were not in
4 merchantable condition and are not fit for the ordinary purpose for which cars are
5 used. Specifically, the Defective Vehicles are inherently defective in that there are
6 defects in the vehicle control systems that permit sudden unintended acceleration to
7 occur; the Defective Vehicles do not have an adequate fail-safe to protect against
8 such SUA events, nor do they have a brake-override; and the ETCS system was not
9 adequately tested.
10

11 2665. Toyota was provided notice of these issues by numerous complaints
12 filed against it, including the instant complaint, and by numerous individual letters
13 and communications sent by Plaintiffs and the Class before or within a reasonable
14 amount of time after Toyota issued the recall and the allegations of vehicle defects
15 became public.
16

17 2666. As a direct and proximate result of Toyota's breach of the warranties of
18 merchantability, Plaintiffs and the Class have been damaged in an amount to be
19 proven at trial.
20

21 **COUNT III**

22 **REVOCATION OF ACCEPTANCE**

23 **(Utah Code Ann. § 70A-2-608)**

24 2667. Plaintiffs reallege and incorporate by reference all paragraphs as though
25 fully set forth herein.
26

27 2668. Plaintiffs identified above demanded revocation and the demands were
28 refused.

1 2669. Plaintiffs and the Class had no knowledge of such defects and
2 nonconformities, were unaware of these defects, and reasonably could not have
3 discovered them when they purchased or leased their automobiles from Toyota. On
4 the other hand, Toyota was aware of the defects and nonconformities at the time of
5 sale and thereafter.
6

7 2670. Acceptance was reasonably induced by the difficulty of discovery of the
8 defects and nonconformities before acceptance.

9 2671. There has been no change in the condition of Plaintiffs' vehicles not
10 caused by the defects and nonconformities.

11 2672. When Plaintiffs sought to revoke acceptance, Toyota refused to accept
12 return of the Defective Vehicles and to refund Plaintiffs' purchase price and monies
13 paid.
14

15 2673. Plaintiffs and the Class would suffer economic hardship if they returned
16 their vehicles but did not receive the return of all payments made by them. Because
17 Toyota is refusing to acknowledge any revocation of acceptance and return
18 immediately any payments made, Plaintiffs and the Class have not re-accepted their
19 Defective Vehicles by retaining them.
20

21 2674. These defects and nonconformities substantially impaired the value of
22 the Defective Vehicles to Plaintiffs and the Class. This impairment stems from two
23 basic sources. First, the Defective Vehicles fail in their essential purpose because
24 they present an unreasonably high risk of sudden unintended acceleration (a risk
25 acknowledged by Toyota's recall), rendering them unsafe in a very material way.
26 Second, the repair and adjust warranty has failed of its essential purpose because
27 Toyota cannot repair or adjust the Defective Vehicles.
28

1 2675. Plaintiffs and the Class provided notice of their intent to seek revocation
2 of acceptance by a class-action lawsuit seeking such relief. In addition, Plaintiffs
3 (and many Class members) have requested that Toyota accept return of their vehicles
4 and return all payments made. Plaintiffs on behalf of themselves and the Class
5 hereby demand revocation and tender their Defective Vehicles.
6

7 2676. Plaintiffs and the Class would suffer economic hardship if they returned
8 their vehicles but did not receive the return of all payments made by them. Because
9 Toyota is refusing to acknowledge any revocation of acceptance and return
10 immediately any payments made, Plaintiffs and the Class have not re-accepted their
11 Defective Vehicles by retaining them, as they must continue using them due to the
12 financial burden of securing alternative means of transport for an uncertain and
13 substantial period of time.
14

15 2677. Finally, due to the Defendants' breach of warranties as set forth herein,
16 Plaintiffs and the Class assert as an additional and/or alternative remedy, as set forth
17 in U.C.A § 70A-2-608, for a revocation of acceptance of the goods, and for a return
18 to Plaintiffs and to the Class of the purchase price of all vehicles currently owned.
19

20 2678. Consequently, Plaintiffs and the Class are entitled to revoke their
21 acceptances, receive all payments made to Toyota, and to all incidental and
22 consequential damages, including the costs associated with purchasing safer vehicles,
23 and all other damages allowable under law, all in amounts to be proven at trial.
24
25
26
27
28

COUNT IV

BREACH OF CONTRACT/COMMON LAW WARRANTY

(Based On Utah Law)

2679. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

2680. To the extent Toyota's repair or adjust commitment is deemed not to be a warranty under the Utah Code, Plaintiffs plead in the alternative under common law warranty and contract law. Toyota limited the remedies available to Plaintiffs and the Class to just repairs and adjustments needed to correct defects in materials or workmanship of any part supplied by Toyota, and/or warranted the quality or nature of those services to Plaintiffs.

2681. Toyota breached this warranty or contract obligation by failing to repair the Defective Vehicles evidencing a sudden unintended acceleration problem, including those that were recalled, or to replace them.

2682. As a direct and proximate result of Defendants' breach of contract or common law warranty, Plaintiffs and the Class have been damaged in an amount to be proven at trial, which shall include, but is not limited to, all compensatory damages, incidental and consequential damages, and other damages allowed by law.

COUNT V

UNJUST ENRICHMENT

(Based On Utah Law)

2683. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1 2684. As a result of their wrongful and fraudulent acts and omissions, as set
2 forth above, pertaining to the design defect of their vehicles and the concealment of
3 the defect, Defendants charged a higher price for their vehicles than the vehicles'
4 true value and Defendants obtained monies which rightfully belong to Plaintiffs.
5

6 2685. Defendants enjoyed the benefit of increased financial gains, to the
7 detriment of Plaintiffs and the Class, who paid a higher price for vehicles which
8 actually had lower values. It would be inequitable and unjust for Defendants to
9 retain these wrongfully obtained profits.

10 2686. Plaintiffs, therefore, seek an order establishing Defendants as
11 constructive trustees of the profits unjustly obtained, plus interest.
12

13 **VERMONT**

14 **COUNT I**

15 **VIOLATION OF VERMONT CONSUMER FRAUD ACT**

16 **(Vt. Stat. Ann. tit. 9, § 2451 *et seq.*)**

17 2687. Plaintiffs reallege and incorporate by reference all paragraphs as though
18 fully set forth herein.
19

20 2688. The Vermont Consumer Fraud Act (“VCFA”) makes unlawful “[u]nfair
21 methods of competition in commerce, and unfair or deceptive acts or practices in
22 commerce....” Vt. Stat. Ann. tit. 9, § 2453(a).

23 2689. Toyota is a seller within the meaning of the VCFA. Vt. Stat. Ann. tit. 9,
24 § 2451(a)(c).
25

26 2690. In the course of Toyota’s business, it willfully failed to disclose and
27 actively concealed the dangerous risk of throttle control failure and the lack of
28 adequate fail-safe mechanisms in Defective Vehicles equipped with ETCS as

1 described above. This was a deceptive act in that Toyota represented that Defective
2 Vehicles have characteristics, uses, benefits, and qualities which they do not have;
3 represented that Defective Vehicles are of a particular standard and quality when
4 they are not; and advertised Defective Vehicles with the intent not to sell them as
5 advertised. Toyota knew or should have known that its conduct violated the VCFA.
6

7 2691. Toyota engaged in a deceptive trade practice under the VCFA when it
8 failed to disclose material information concerning the Toyota vehicles which was
9 known to Toyota at the time of the sale. Toyota deliberately withheld the
10 information about the vehicles' propensity for rapid, uncontrolled acceleration in
11 order to ensure that consumers would purchase its vehicles and to induce the
12 consumer to enter into a transaction.
13

14 2692. The information withhold was material in that it was information that
15 was important to consumers and likely to affect their choice of, or conduct regarding,
16 the purchase of their cars. Toyota's withholding of this information was likely to
17 mislead consumers acting reasonably under the circumstances. The propensity of the
18 Toyotas for rapid, uncontrolled acceleration and their lack of a fail-safe mechanism
19 were material to Plaintiffs and the Class. Had Plaintiffs and the Class known that
20 their Toyotas had these serious safety defects, they would not have purchased their
21 Toyotas.
22

23 2693. Toyota's conduct has caused or is to cause a substantial injury that is
24 not reasonably avoided by consumers, and the harm is not outweighed by a
25 countervailing benefit to consumers or competition.
26

27 2694. Plaintiffs and the Class have suffered injury and damages as a result of
28 Toyota's false or fraudulent representations and practices in violation of § 2453.

1 Plaintiffs and the Class overpaid for their vehicles and did not receive the benefit of
2 their bargain. The value of their Toyota's has diminished now that the safety issues
3 have come to light, and Plaintiffs and the Class own vehicles that are not safe.

4 2695. Plaintiffs are entitled to recover "appropriate equitable relief" and "the
5 amount of [their] damages, or the consideration or the value of the consideration
6 given by [them], reasonable attorney's fees, and exemplary damages not exceeding
7 three times the value of the consideration given by [them]" pursuant to Vt. Stat. Ann.
8 tit. 9, § 2461(b).

10 **COUNT II**
11 **BREACH OF EXPRESS WARRANTY**
12 **(Vt. Stat. Ann. tit. 9A § 2-313)**

13 2696. Plaintiffs reallege and incorporate by reference all paragraphs as though
14 fully set forth herein.

15 2697. Toyota is and was at all relevant times a merchant with respect to motor
16 vehicles.

17 2698. In the course of selling its vehicles, Toyota expressly warranted in
18 writing that the Vehicles were covered by a Basic Warranty.

19 2699. Toyota breached the express warranty to repair and adjust to correct
20 defects in materials and workmanship of any part supplied by Toyota. Toyota has
21 not repaired or adjusted, and has been unable to repair or adjust, the Vehicles'
22 materials and workmanship defects.

23 2700. In addition to this Basic Warranty, Toyota expressly warranted several
24 attributes, characteristics and qualities, as set forth above.

1 2701. These warranties are only a sampling of the numerous warranties that
2 Toyota made relating to safety, reliability and operation, which are more fully
3 outlined in Section IV.A., *supra*. Generally these express warranties promise
4 heightened, superior, and state-of-the-art safety, reliability, performance standards,
5 and promote the benefits of ETCS. These warranties were made, *inter alia*, in
6 advertisements, in Toyota's "e-brochures," and in uniform statements provided by
7 Toyota to be made by salespeople. These affirmations and promises were part of the
8 basis of the bargain between the parties.
9

10 2702. These additional warranties were also breached because the Defective
11 Vehicles were not fully operational, safe, or reliable (and remained so even after the
12 problems were acknowledged and a recall "fix" was announced), nor did they
13 comply with the warranties expressly made to purchasers or lessees. Toyota did not
14 provide at the time of sale, and has not provided since then, vehicles conforming to
15 these express warranties.
16

17 2703. Furthermore, the limited warranty of repair and/or adjustments to
18 defective parts, fails in its essential purpose because the contractual remedy is
19 insufficient to make the Plaintiffs and the Class whole and because the Defendants
20 have failed and/or have refused to adequately provide the promised remedies within
21 a reasonable time.
22

23 2704. Accordingly, recovery by the Plaintiffs is not limited to the limited
24 warranty of repair or adjustments to parts defective in materials or workmanship, and
25 Plaintiffs seek all remedies as allowed by law.
26

27 2705. Also, as alleged in more detail herein, at the time that Defendants
28 warranted and sold the vehicles they knew that the vehicles did not conform to the

1 warranties and were inherently defective, and Defendants wrongfully and
2 fraudulently misrepresented and/or concealed material facts regarding their vehicles.
3 Plaintiffs and the Class were therefore induced to purchase the vehicles under false
4 and/or fraudulent pretenses.

5
6 2706. Moreover, many of the damages flowing from the Defective Vehicles
7 cannot be resolved through the limited remedy of “replacement or adjustments,” as
8 those incidental and consequential damages have already been suffered due to their
9 failure and/or continued failure to provide such limited remedy within a reasonable
10 time, and any limitation on Plaintiffs’ and the Class’ remedies would be insufficient
11 to make Plaintiffs and the class whole.

12
13 2707. Finally, due to the Defendants’ breach of warranties as set forth herein,
14 Plaintiffs and the Class assert as an additional and/or alternative remedy, as set for in
15 Vt. Stat. Ann. tit. 9, § 2-608, for revocation of acceptance of the goods, and for a
16 return to Plaintiffs and to the Class of the purchase price of all vehicles currently
17 owned.

18
19 2708. Toyota was provided notice of these issues by numerous complaints
20 filed against it, including the instant complaint, and by numerous individual letters
21 and communications sent by Plaintiffs and the Class before or within a reasonable
22 amount of time after Toyota issued the recall and the allegations of vehicle defects
23 became public.

24
25 2709. As a direct and proximate result of Toyota’s breach of express
26 warranties, Plaintiffs and the Class have been damaged in an amount to be
27 determined at trial.
28

COUNT III

BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY

(Vt. Stat. Ann. tit. 9A §2-314)

2710. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

2711. Toyota is and was at all relevant times a merchant with respect to motor vehicles.

2712. A warranty that the Defective Vehicles were in merchantable condition is implied by law in the instant transactions.

2713. These vehicles, when sold and at all times thereafter, were not in merchantable condition and are not fit for the ordinary purpose for which cars are used. Specifically, the Defective Vehicles are inherently defective in that there are defects in the vehicle control systems that permit sudden unintended acceleration to occur; the Defective Vehicles do not have an adequate fail-safe to protect against such SUA events, nor do they have a brake-override; and the ETCS system was not adequately tested.

2714. Toyota was provided notice of these issues by numerous complaints filed against it, including the instant complaint, and by numerous individual letters and communications sent by Plaintiffs and members of the Class before or within a reasonable amount of time after Toyota issued the recall and the allegations of vehicle defects became public.

2715. As a direct and proximate result of Toyota's breach of the warranties of merchantability, Plaintiffs and the Class have been damaged in an amount to be proven at trial.

COUNT IV

REVOCATION OF ACCEPTANCE

(Vt. Stat. Ann. tit. 9A §2-608)

2716. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

2717. Plaintiffs identified above demanded revocation and the demands were refused.

2718. Plaintiffs and the Class had no knowledge of such defects and nonconformities, were unaware of these defects, and reasonably could not have discovered them when they purchased or leased their automobiles from Toyota. On the other hand, Toyota was aware of the defects and nonconformities at the time of sale and thereafter.

2719. Acceptance was reasonably induced by the difficulty of discovery of the defects and nonconformities before acceptance.

2720. There has been no change in the condition of Plaintiffs' vehicles not caused by the defects and nonconformities.

2721. When Plaintiffs sought to revoke acceptance, Toyota refused to accept return of the Defective Vehicles and to refund Plaintiffs' purchase price and monies paid.

2722. Plaintiffs and the Class would suffer economic hardship if they returned their vehicles but did not receive the return of all payments made by them. Because Toyota is refusing to acknowledge any revocation of acceptance and return immediately any payments made, Plaintiffs and the Class have not re-accepted their Defective Vehicles by retaining them.

1 2723. These defects and nonconformities substantially impaired the value of
2 the Defective Vehicles to Plaintiffs and the Class. This impairment stems from two
3 basic sources. First, the Defective Vehicles fail in their essential purpose because
4 they present an unreasonably high risk of sudden unintended acceleration (a risk
5 acknowledged by Toyota's recall), rendering them unsafe in a material way. Second,
6 the repair and adjust warranty has failed of its essential purpose because Toyota
7 cannot repair or adjust the Defective Vehicles.
8

9 2724. Plaintiffs and the Class provided notice of their intent to seek revocation
10 of acceptance by a class-action lawsuit seeking such relief. In addition, Plaintiffs
11 (and many Class members) have requested that Toyota accept return of their vehicles
12 and return all payments made. Plaintiffs on behalf of themselves and the Class
13 hereby demand revocation and tender their Defective Vehicles.
14

15 2725. Plaintiffs and the Class would suffer economic hardship if they returned
16 their vehicles but did not receive the return of all payments made by them. Because
17 Toyota is refusing to acknowledge any revocation of acceptance and return
18 immediately any payments made, Plaintiffs and the Class have not re-accepted their
19 Defective Vehicles by retaining them, as they must continue using them due to the
20 financial burden of securing alternative means of transport for an uncertain and
21 substantial period of time.
22

23 2726. Consequently, Plaintiffs and the Class are entitled to revoke their
24 acceptances, receive all payments made to Toyota, and to all incidental and
25 consequential damages, including the costs associated with purchasing safer
26 vehicles, and all other damages allowable under law, all in amounts to be proven at
27 trial.
28

COUNT V

BREACH OF CONTRACT

(Based On Vermont Law)

2727. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

2728. To the extent Toyota's repair or adjust commitment is deemed not to be a warranty under Vermont's Commercial Code, Plaintiffs plead in the alternative under common law contract law. Toyota limited the remedies available to Plaintiffs and the Class to just repairs and adjustments needed to correct defects in materials or workmanship of any part supplied by Toyota, and/or warranted the quality or nature of those services to Plaintiffs.

2729. Toyota breached this contract obligation by failing to repair the Defective Vehicles evidencing a sudden unintended acceleration problem, including those that were recalled, or to replace them.

2730. As a direct and proximate result of Defendants' breach of contract, Plaintiffs and the Class have been damaged in an amount to be proven at trial, which shall include, but is not limited to, all compensatory damages, incidental and consequential damages, and other damages allowed by law.

COUNT VI

UNJUST ENRICHMENT

(Based On Vermont Law)

2731. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1 remedy, and its misrepresentations and omissions regarding the safety and reliability
2 of its vehicles.

3 2738. Toyota's actions as set forth above occurred in the conduct of trade or
4 commerce.

5 2739. Toyota's actions impact the public interest because Plaintiffs were
6 injured in exactly the same way as millions of others purchasing and/or leasing
7 Toyota vehicles as a result of Toyota's generalized course of deception. All of the
8 wrongful conduct alleged herein occurred, and continues to occur, in the conduct of
9 Toyota's business.
10

11 2740. Plaintiffs and the Class were injured as a result of Defendant's conduct.
12 Plaintiffs overpaid for their Defective Vehicles and did not receive the benefit of
13 their bargain, and their vehicles have suffered a diminution in value.
14

15 2741. Toyota's conduct proximately caused the injuries to Plaintiffs and the
16 Class.

17 2742. Toyota is liable to Plaintiffs and the Class for damages in amounts to be
18 proven at trial, including attorneys' fees, costs, and treble damages.
19

20 2743. Pursuant to WASH. REV. CODE. ANN. § 19.86.095, Plaintiffs will serve
21 the Washington Attorney General with a copy of this complaint as Plaintiffs seek
22 injunctive relief.

23 **COUNT II**

24 **BREACH OF EXPRESS WARRANTY**

25 **(Rev. Code Wash. § 62A.2-313)**

26 2744. Plaintiffs reallege and incorporate by reference all paragraphs as though
27 fully set forth herein.
28

1 2745. Toyota is and was at all relevant times a merchant with respect to motor
2 vehicles.

3 2746. In the course of selling its vehicles, Toyota expressly warranted in
4 writing that the Vehicles were covered by a Basic Warranty.

5 2747. Toyota breached the express warranty to repair and adjust to correct
6 defects in materials and workmanship of any part supplied by Toyota. Toyota has
7 not repaired or adjusted, and has been unable to repair or adjust, the Vehicles'
8 materials and workmanship defects.

9
10 2748. In addition to this Basic Warranty, Toyota expressly warranted several
11 attributes, characteristics and qualities, as set forth above.

12 2749. These warranties are only a sampling of the numerous warranties that
13 Toyota made relating to safety, reliability and operation, which are more fully
14 outlined in Section IV.A., *supra*. Generally these express warranties promise
15 heightened, superior, and state-of-the-art safety, reliability, performance standards,
16 and promote the benefits of ETCS. These warranties were made, *inter alia*, in
17 advertisements, in Toyota's "e brochures," and in uniform statements provided by
18 Toyota to be made by salespeople. These affirmations and promises were part of the
19 basis of the bargain between the parties.

20
21 2750. These additional warranties were also breached because the Defective
22 Vehicles were not fully operational, safe, or reliable (and remained so even after the
23 problems were acknowledged and a recall "fix" was announced), nor did they
24 comply with the warranties expressly made to purchasers or lessees. Toyota did not
25 provide at the time of sale, and has not provided since then, vehicles conforming to
26 these express warranties.
27
28

1 2751. Furthermore, the limited warranty of repair and/or adjustments to
2 defective parts, fails in its essential purpose because the contractual remedy is
3 insufficient to make the Plaintiffs and the Class whole and because the Defendants
4 have failed and/or have refused to adequately provide the promised remedies within
5 a reasonable time.
6

7 2752. Accordingly, recovery by the Plaintiffs is not limited to the limited
8 warranty of repair or adjustments to parts defective in materials or workmanship, and
9 Plaintiffs seek all remedies as allowed by law.

10 2753. Also, as alleged in more detail herein, at the time that Defendants
11 warranted and sold the vehicles they knew that the vehicles did not conform to the
12 warranties and were inherently defective, and Defendants wrongfully and
13 fraudulently misrepresented and/or concealed material facts regarding their vehicles.
14 Plaintiff and the Class were therefore induced to purchase the vehicles under false
15 and/or fraudulent pretenses.
16

17 2754. Moreover, many of the damages flowing from the Defective Vehicles
18 cannot be resolved through the limited remedy of “replacement or adjustments,” as
19 those incidental and consequential damages have already been suffered due to
20 Defendants’ fraudulent conduct as alleged herein, and due to their failure and/or
21 continued failure to provide such limited remedy within a reasonable time, and any
22 limitation on Plaintiffs’ and the Class’ remedies would be insufficient to make
23 Plaintiffs and the Class whole.
24

25 2755. Finally, due to the Defendants’ breach of warranties as set forth herein,
26 Plaintiffs and the Class assert as an additional and/or alternative remedy, as set forth
27 in REV. CODE WASH. § 62A.2-608, for a revocation of acceptance of the goods, and
28

1 for a return to Plaintiffs and to the Class of the purchase price of all vehicles
2 currently owned.

3 2756. Toyota was provided notice of these issues by numerous complaints
4 filed against it, including the instant complaint, and by numerous individual letters
5 and communications sent by Plaintiffs and the Class before or within a reasonable
6 amount of time after Toyota issued the recall and the allegations of vehicle defects
7 became public.
8

9 2757. As a direct and proximate result of Toyota's breach of express
10 warranties, Plaintiffs and the Class have been damaged in an amount to be
11 determined at trial.
12

13 **COUNT III**

14 **BREACH OF THE IMPLIED WARRANTY OF MERCHANTABILITY**

15 **(Rev. Code Wash. § 62A.2-614)**

16 2758. Plaintiffs reallege and incorporate by reference all paragraphs as though
17 fully set forth herein.

18 2759. Toyota is and was at all relevant times a merchant with respect to motor
19 vehicles.
20

21 2760. A warranty that the Defective Vehicles were in merchantable condition
22 is implied by law in the instant transactions.

23 2761. These vehicles, when sold and at all times thereafter, were not in
24 merchantable condition and are not fit for the ordinary purpose for which cars are
25 used. Specifically, the Defective Vehicles are inherently defective in that there are
26 defects in the vehicle control systems that permit sudden unintended acceleration to
27 occur; the Defective Vehicles do not have an adequate fail-safe to protect against
28

1 such SUA events, nor do they have a brake-override; and the ETCS system was not
2 adequately tested.

3 2762. Toyota was provided notice of these issues by numerous complaints
4 filed against it, including the instant complaint, and by numerous individual letters
5 and communications sent by Plaintiffs and the Class before or within a reasonable
6 amount of time after Toyota issued the recall and the allegations of vehicle defects
7 became public.
8

9 2763. Privity is not required in this case because Plaintiffs and the Class are
10 intended third-party beneficiaries of contracts between Toyota and its dealers;
11 specifically, they are the intended beneficiaries of Toyota's implied warranties. The
12 dealers were not intended to be the ultimate consumers of the Defective Vehicles and
13 have no rights under the warranty agreements provided with the Defective Vehicles;
14 the warranty agreements were designed for and intended to benefit the ultimate
15 consumers only.
16

17 2764. As a direct and proximate result of Toyota's breach of the warranties of
18 merchantability, Plaintiffs and the Class have been damaged in an amount to be
19 proven at trial.
20

21 **COUNT IV**

22 **REVOCATION OF ACCEPTANCE**

23 **(Rev. Code Wash. § 62A.2-608)**

24 2765. Plaintiffs reallege and incorporate by reference all paragraphs as though
25 fully set forth herein.
26

27 2766. Plaintiffs identified above demanded revocation and the demands were
28 refused.

1 2767. Plaintiffs and the Class had no knowledge of such defects and
2 nonconformities, were unaware of these defects, and reasonably could not have
3 discovered them when they purchased or leased their automobiles from Toyota. On
4 the other hand, Toyota was aware of the defects and nonconformities at the time of
5 sale and thereafter.
6

7 2768. Acceptance was reasonably induced by the difficulty of discovery of the
8 defects and nonconformities before acceptance.

9 2769. There has been no change in the condition of Plaintiffs' vehicles not
10 caused by the defects and nonconformities.

11 2770. When Plaintiffs sought to revoke acceptance, Toyota refused to accept
12 return of the Defective Vehicles and to refund Plaintiffs' purchase price and monies
13 paid.
14

15 2771. Plaintiffs and the Class would suffer economic hardship if they returned
16 their vehicles but did not receive the return of all payments made by them. Because
17 Toyota is refusing to acknowledge any revocation of acceptance and return
18 immediately any payments made, Plaintiffs and the Class have not re-accepted their
19 Defective Vehicles by retaining them.
20

21 2772. These defects and nonconformities substantially impaired the value of
22 the Defective Vehicles to Plaintiffs and the Class. This impairment stems from two
23 basic sources. First, the Defective Vehicles fail in their essential purpose because
24 they present an unreasonably high risk of sudden unintended acceleration (a risk
25 acknowledged by Toyota's recall), rendering them unsafe in a very material way.
26 Second, the repair and adjust warranty has failed of its essential purpose because
27 Toyota cannot repair or adjust the Defective Vehicles.
28

1 2773. Plaintiffs and the Class provided notice of their intent to seek revocation
2 of acceptance by a class-action lawsuit seeking such relief. In addition, Plaintiffs
3 (and many Class members) have requested that Toyota accept return of their vehicles
4 and return all payments made. Plaintiffs on behalf of themselves and the Class
5 hereby demand revocation and tender their Defective Vehicles.
6

7 2774. Plaintiffs and the Class would suffer economic hardship if they returned
8 their vehicles but did not receive the return of all payments made by them. Because
9 Toyota is refusing to acknowledge any revocation of acceptance and return
10 immediately any payments made, Plaintiffs and the Class have not re-accepted their
11 Defective Vehicles by retaining them, as they must continue using them due to the
12 financial burden of securing alternative means of transport for an uncertain and
13 substantial period of time.
14

15 2775. Finally, due to the Defendants' breach of warranties as set forth herein,
16 Plaintiffs and the Class assert as an additional and/or alternative remedy, as set forth
17 in REV. CODE WASH. § 62A.2-608, for a revocation of acceptance of the goods, and
18 for a return to Plaintiffs and to the Class of the purchase price of all vehicles
19 currently owned.
20

21 2776. Consequently, Plaintiffs and the Class are entitled to revoke their
22 acceptances, receive all payments made to Toyota, and to all incidental and
23 consequential damages, including the costs associated with purchasing safer
24 vehicles, and all other damages allowable under law, all in amounts to be proven at
25 trial.
26
27
28

COUNT V

BREACH OF CONTRACT/COMMON LAW WARRANTY

(Based On Washington Law)

2777. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

2778. To the extent Toyota's repair or adjust commitment is deemed not to be a warranty under Washington's Commercial Code, Plaintiffs plead in the alternative under common law warranty and contract law. Toyota limited the remedies available to Plaintiffs and the Class to just repairs and adjustments needed to correct defects in materials or workmanship of any part supplied by Toyota, and/or warranted the quality or nature of those services to Plaintiffs.

2779. Toyota breached this warranty or contract obligation by failing to repair the Defective Vehicles evidencing a sudden unintended acceleration problem, including those that were recalled, or to replace them.

2780. As a direct and proximate result of Defendants' breach of contract or common law warranty, Plaintiffs and the Class have been damaged in an amount to be proven at trial, which shall include, but is not limited to, all compensatory damages, incidental and consequential damages, and other damages allowed by law.

COUNT VI

FRAUD BY CONCEALMENT

(Based On Washington Law)

2781. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1 2782. As set forth above, Defendants concealed and/or suppressed material
2 facts concerning the safety of their vehicles.

3 2783. Defendants actively concealed and/or suppressed these material facts, in
4 whole or in part, with the intent to induce Plaintiffs and the Class to purchase
5 Defective Vehicles at a higher price for the vehicles, which did not match the
6 vehicles' true value.
7

8 2784. Defendants still have not made full and adequate disclosure and
9 continue to defraud Plaintiffs and the Class.

10 2785. Plaintiffs and the Class were unaware of these omitted material facts
11 and would not have acted as they did if they had known of the concealed and/or
12 suppressed facts. Plaintiffs' and the Class' actions were justified. Defendants were
13 in exclusive control of the material facts and such facts were not known to the public
14 or the Class.
15

16 2786. As a result of the concealment and/or suppression of the facts, Plaintiffs
17 and the Class sustained damage. For those Plaintiffs and the Class who elect to
18 affirm the sale, these damages, include the difference between the actual value of
19 that which Plaintiffs and the Class paid and the actual value of that which they
20 received, together with additional damages arising from the sales transaction,
21 amounts expended in reliance upon the fraud, compensation for loss of use and
22 enjoyment of the property, and/or lost profits. For those Plaintiffs and the Class who
23 want to rescind the purchase, then those Plaintiffs and the Class are entitled to
24 restitution and consequential damages.
25
26

27 2787. Defendants' acts were done maliciously, oppressively, deliberately, with
28 intent to defraud, and in reckless disregard of Plaintiffs' and the Class' rights and

1 well-being to enrich Defendants. Defendants' conduct warrants an assessment of
2 punitive damages in an amount sufficient to deter such conduct in the future, which
3 amount is to be determined according to proof.

4 **COUNT VII**

5 **UNJUST ENRICHMENT**

6 **(Based On Washington Law)**

7
8 2788. Plaintiffs reallege and incorporate by reference all paragraphs as though
9 fully set forth herein.

10 2789. Toyota had knowledge of the safety defects in its vehicles, which it
11 failed to disclose to Plaintiffs and the Class.

12 2790. As a result of their wrongful and fraudulent acts and omissions, as set
13 forth above, pertaining to the design defect of their vehicles and the concealment of
14 the defect, Toyota charged a higher price for their vehicles than the vehicles' true
15 value and Toyota obtained monies which rightfully belong to Plaintiffs.

16 2791. Toyota appreciated, accepted and retained the non-gratuitous benefits
17 conferred by Plaintiffs and the Class, who without knowledge of the safety defects
18 paid a higher price for vehicles which actually had lower values. It would be
19 inequitable and unjust for Toyota to retain these wrongfully obtained profits.

20 2792. Plaintiffs, therefore, are entitled to restitution and seek an order
21 establishing Toyota as constructive trustees of the profits unjustly obtained, plus
22 interest.
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WEST VIRGINIA
COUNT I
VIOLATIONS OF THE CONSUMER CREDIT AND PROTECTION ACT
(W. Va. Code § 46A-1-101, *et seq.*)

2793. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

2794. Defendants are “persons” under W.VA. CODE § 46A-1-102(31).

2795. Plaintiffs are “consumers,” as defined by W.VA. CODE §§ and 46A-1-102(12) and 46A-6-102(2), who purchased or leased one or more Defective Vehicles.

2796. Defendants both participated in unfair or deceptive acts or practices that violated the Consumer Credit and Protection Act (“CCPA”), W. VA. CODE § 46A-1-101, *et seq.* as described above and below. Defendants each are directly liable for these violations of law. TMC also is liable for TMS’s violations of the CCPA because TMS acts as TMC’s general agent in the United States for purposes of sales and marketing.

2797. By failing to disclose and actively concealing the dangerous risk of throttle control failure and the lack of adequate fail-safe mechanisms in Defective Vehicles equipped with ETCS, Defendants engaged in deceptive business practices prohibited by the CCPA, W. VA. CODE § 46A-1-101, *et seq.*, including (1) representing that Defective Vehicles have characteristics, uses, benefits, and qualities which they do not have, (2) representing that Defective Vehicles are of a particular standard, quality, and grade when they are not, (3) advertising Defective Vehicles with the intent not to sell them as advertised, (4) representing that a

1 transaction involving Defective Vehicles confers or involves rights, remedies, and
2 obligations which it does not, and (5) representing that the subject of a transaction
3 involving Defective Vehicles has been supplied in accordance with a previous
4 representation when it has not.

5
6 2798. As alleged above, Defendants made numerous material statements about
7 the safety and reliability of Defective Vehicles that were either false or misleading.
8 Each of these statements contributed to the deceptive context of TMC's and TMS's
9 unlawful advertising and representations as a whole.

10 2799. Defendants knew that the ETCS in Defective Vehicles was defectively
11 designed or manufactured, would fail without warning, and was not suitable for its
12 intended use of regulating throttle position and vehicle speed based on driver
13 commands. Defendants nevertheless failed to warn Plaintiffs about these inherent
14 dangers despite having a duty to do so.

15
16 2800. Defendants each owed Plaintiffs a duty to disclose the defective nature
17 of Defective Vehicles, including the dangerous risk of throttle control failure, the
18 ETCS defects, and the lack of adequate fail-safe mechanisms, because they:

19
20 a. Possessed exclusive knowledge of the defects rendering
21 Defective Vehicles inherently more dangerous and unreliable than similar vehicles;

22 b. Intentionally concealed the hazardous situation with Defective
23 Vehicles through their deceptive marketing campaign and recall program that they
24 designed to hide the life-threatening problems from Plaintiffs; and/or

25 c. Made incomplete representations about the safety and reliability
26 of Defective Vehicles generally, and ETCS in particular, while purposefully
27 withholding material facts from Plaintiffs that contradicted these representations.
28

1 2801. Defective Vehicles equipped with ETCS pose an unreasonable risk of
2 death or serious bodily injury to Plaintiffs, passengers, other motorists, pedestrians,
3 and the public at large, because they are susceptible to incidents of sudden
4 unintended acceleration.

5 2802. Whether or not a vehicle (a) accelerates only when commanded to do so
6 and (b) decelerates and stops when commanded to do so are facts that a reasonable
7 consumer would consider important in selecting a vehicle to purchase or lease. When
8 Plaintiffs bought a Toyota Vehicle for personal, family, or household purposes, they
9 reasonably expected the vehicle would (a) not accelerate unless commanded to do so
10 by application of the accelerator pedal or other driver controlled means; (b)
11 decelerate to a stop when the brake pedal was applied, and was equipped with any
12 necessary fail-safe mechanisms including a brake-override.

13 2803. TMC's and TMS's unfair or deceptive acts or practices were likely to
14 deceive reasonable consumers, including Plaintiffs, about the true safety and
15 reliability of Defective Vehicles.

16 2804. Defendants have also engaged in business acts or practices that are
17 unlawful because they violate the National Traffic and Motor Vehicle Safety Act of
18 1996 (the "Safety Act"), codified at 49 U.S.C. § 30101, *et seq.*, and its regulations.

19 2805. FMVSS 124, codified at 49 C.F.R. § 571.124, sets the standard for
20 accelerator control systems. Specifically, FMVSS 124 establishes requirements for
21 the return of a vehicle's throttle to the idle position when the driver removes the
22 actuating force from the accelerator control, or in the event of a severance or
23 disconnection in the accelerator control system. The purpose of FMVSS 124 is to
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1 reduce deaths and injuries resulting from engine overspeed caused by malfunctions
2 in the accelerator control system.

3 2806. FMVSS 124 requires that throttles in passenger vehicles return to the
4 idle position within certain maximum allowable times after the driver has removed
5 the actuating force from the accelerator control: one second for vehicles of 4,536
6 kilograms or less gross vehicle weight rating (“GVWR”), two seconds for vehicles of
7 more than 4,536 kilograms GVWR, and three seconds for any vehicle that is exposed
8 to ambient air at – 18 degrees Celsius to – 40 degrees Celsius.
9

10 2807. Defective Vehicles equipped with ETCS do not comply with FMVSS
11 124 because a design defect causes their throttles to be susceptible to remaining in an
12 open position and incapable of returning to the idle position within the maximum
13 allowable time after the driver has removed the actuating force from the accelerator
14 control.
15

16 2808. Defendants each violated 49 U.S.C. § 3-112(a)(1) by manufacturing for
17 sale, selling, offering for introduction in interstate commerce, or importing into the
18 United States, Defective Vehicles equipped with ETCS that failed to comply with
19 FMVSS 124.
20

21 2809. Defendants each violated 49 U.S.C. § 30115(a) by certifying that
22 Defective Vehicles equipped with ETCS complied with FMVSS 124 when, in the
23 exercise of reasonable care, Defendants each had reason to know that the
24 certification was false or misleading because a design defect causes throttles in
25 Defective Vehicles equipped with ETCS to be susceptible to remaining in an open
26 position and incapable of returning to the idle position within the maximum
27
28

1 allowable time after the driver has removed the actuating force from the accelerator
2 control.

3 2810. As a result of its violations of the CCPA detailed above, Defendants
4 caused ascertainable loss to Plaintiffs and, if not stopped, will continue to harm
5 Plaintiffs. Plaintiffs currently own or lease, or within the class period have owned or
6 leased, Defective Vehicles that are defective and inherently unsafe. ETCS defects
7 and the resulting unintended acceleration incidents have caused the value of
8 Defective Vehicles to plummet.
9

10 2811. Plaintiffs risk irreparable injury as a result of TMC's and TMS's acts
11 and omissions in violation of the CCPA, and these violations present a continuing
12 risk to Plaintiffs as well as to the general public.
13

14 2812. On November 13, 2009, notice was sent to TMS in compliance with
15 W. VA. CODE § 46A-6-106. Specifically, Plaintiffs sent a notice and demand letter
16 via certified mail to TMS's principal place of business in California, thereby
17 satisfying W. VA. CODE § 46A-1-106(b). On or about November 20, 2009, a notice
18 and demand letter was set via certified mail to TMC's address in Washington, DC,
19 where TMC acted with its United States subsidiaries to take actions violating the
20 CCPA, and where TMC otherwise acted in violation of that statute. Over twenty
21 days have since passed without TMS or TMC taking, or agreeing to take, the
22 appropriate corrective measures.
23

24 2813. Pursuant to W. VA. CODE § 46A-1-106, Plaintiffs seek monetary relief
25 against TMS and TMC measured as the greater of (a) actual damages in an amount
26 to be determined at trial and (b) statutory damages in the amount of \$200 per
27
28

1 violation of the CCPA for each Plaintiff and each member of the Class they seek to
2 represent.

3 2814. Plaintiffs also seek punitive damages against Defendants because each
4 carried out despicable conduct with willful and conscious disregard of the rights and
5 safety of others, subjecting Plaintiffs to cruel and unjust hardship as a result.
6 Defendants intentionally and willfully misrepresented the safety and reliability of
7 Defective Vehicles, deceived Plaintiffs on life-or-death matters, and concealed
8 material facts that only it knew, all to avoid the expense and public relations
9 nightmare of correcting a deadly flaw in the Defective Vehicles it repeatedly
10 promised Plaintiffs were safe. Defendants' unlawful conduct constitutes malice,
11 oppression, and fraud warranting punitive damages.
12

13
14 2815. The recalls and repairs instituted by Toyota have not been adequate.
15 Defective Vehicles still are defective and the "confidence" booster offer of an
16 override is not an effective remedy and is not offered to all Defective Vehicles,
17 including the 2002-2007 Camry.

18 2816. Plaintiffs further seek an order enjoining Defendants' unfair or
19 deceptive acts or practices, restitution, punitive damages, costs of Court, attorney's
20 fees under W. VA. CODE § 46A-5-101, *et seq.*, and any other just and proper relief
21 available under the CCPA.
22

23 **COUNT II**

24 **BREACH OF EXPRESS WARRANTY**

25 **(W. Va. Code § 46-2-313)**

26
27 2817. Plaintiffs reallege and incorporate by reference all paragraphs as though
28 fully set forth herein.

1 2818. Toyota is and was at all relevant times a seller of motor vehicles under
2 W. VA. CODE § 46-2-313, and is also a “merchant” as the term is used in W. VA.
3 CODE § 46A-6-107.

4 2819. In the course of selling its vehicles, Toyota expressly warranted in
5 writing that the Vehicles were covered by a Basic Warranty.

6 2820. Toyota breached the express warranty to repair and adjust to correct
7 defects in materials and workmanship of any part supplied by Toyota. Toyota has
8 not repaired or adjusted, and has been unable to repair or adjust, the Vehicles’
9 materials and workmanship defects.

10 2821. In addition to this Basic Warranty, Toyota expressly warranted several
11 attributes, characteristics and qualities, as set forth above.

12 2822. These warranties are only a sampling of the numerous warranties that
13 Toyota made relating to safety, reliability and operation, which are more fully
14 outlined in Section IV.A., *supra*. Generally these express warranties promise
15 heightened, superior, and state-of-the-art safety, reliability, performance standards,
16 and promote the benefits of ETCS. These warranties were made, *inter alia*, in
17 advertisements, in Toyota’s “e brochures,” and in uniform statements provided by
18 Toyota to be made by salespeople. These affirmations and promises were part of the
19 basis of the bargain between the parties.

20 2823. These additional warranties were also breached because the Defective
21 Vehicles were not fully operational, safe, or reliable (and remained so even after the
22 problems were acknowledged and a recall “fix” was announced), nor did they
23 comply with the warranties expressly made to purchasers or lessees. Toyota did not
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1 provide at the time of sale, and has not provided since then, vehicles conforming to
2 these express warranties.

3 2824. Furthermore, the limited warranty of repair and/or adjustments to
4 defective parts, fails in its essential purpose because the contractual remedy is
5 insufficient to make the Plaintiffs and the Class whole and because the Defendants
6 have failed and/or have refused to adequately provide the promised remedies within
7 a reasonable time.
8

9 2825. Accordingly, recovery by the Plaintiffs is not limited to the limited
10 warranty of repair or adjustments to parts defective in materials or workmanship, and
11 Plaintiffs seek all remedies as allowed by law.
12

13 2826. Also, as alleged in more detail herein, at the time that Defendants
14 warranted and sold the vehicles they knew that the vehicles did not conform to the
15 warranties and were inherently defective, and Defendants wrongfully and
16 fraudulently misrepresented and/or concealed material facts regarding their vehicles.
17 Plaintiffs were therefore induced to purchase the vehicles under false and/or
18 fraudulent pretenses. The enforcement under these circumstances of any limitations
19 whatsoever precluding the recovery of incidental and/or consequential damages is
20 unenforceable.
21

22 2827. Additionally, the enforcement under these circumstances of any
23 limitations on the recovery of incidental and/or consequential damages, or indeed
24 any limitations whatsoever on any express warranty, is unenforceable pursuant to
25 W. VA. CODE § 46A-6-107 (2).
26

27 2828. Moreover, many of the damages flowing from the Defective Vehicles
28 cannot be resolved through the limited remedy of “replacement or adjustments,” as

1 those incidental and consequential damages have already been suffered due to
2 Defendants' fraudulent conduct as alleged herein, and due to their failure and/or
3 continued failure to provide such limited remedy within a reasonable time, and any
4 limitation on Plaintiffs' and the Class' remedies would be insufficient to make
5 Plaintiffs and the Class whole.
6

7 2829. Finally, due to the Defendants' breach of warranties as set forth herein,
8 Plaintiffs and the Class assert as an additional and/or alternative remedy, as set forth
9 in W. VA. CODE § 46A-6A-4, for a revocation of acceptance of the goods, and for a
10 return to Plaintiffs and to the Class of the purchase price of all vehicles currently
11 owned and for such other incidental and consequential damages as allowed under W.
12 VA. CODE § 46A-6A-1, *et seq.*
13

14 2830. Toyota was provided notice of these issues by numerous complaints
15 filed against it, including the instant complaint, and by numerous individual letters
16 and communications sent by Plaintiffs and the Class before or within a reasonable
17 amount of time after Toyota issued the recall and the allegations of vehicle defects
18 became public.
19

20 2831. As a direct and proximate result of Toyota's breach of express
21 warranties, Plaintiffs and the Class have been damaged in an amount to be
22 determined at trial.
23

24 **COUNT III**

25 **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**

26 **(W. Va. Code § 46-2-314)**

27 2832. Plaintiffs reallege and incorporate by reference all paragraphs as though
28 fully set forth herein.

1 2833. Toyota is and was at all relevant times a seller of motor vehicles under
2 W. VA. CODE § 46-2-314, and is also a “merchant” as the term is used in W. VA.
3 CODE § 46A-6-107 and § 46-2-314.

4 2834. A warranty that the Defective Vehicles were in merchantable condition
5 was implied by law in the instant transaction, pursuant to W. VA. CODE § 46-2-314.
6

7 2835. These vehicles, when sold and at all times thereafter, were not in
8 merchantable condition and are not fit for the ordinary purpose for which cars are
9 used. Specifically, the Defective Vehicles are inherently defective in that there are
10 defects in the vehicle control systems that permit sudden unintended acceleration to
11 occur; the Defective Vehicles do not have an adequate fail-safe to protect against
12 such SUA events, nor do they have a brake-override; and the ETCS system was not
13 adequately tested.
14

15 2836. Toyota was provided notice of these issues by numerous complaints
16 filed against it, including the instant complaint, and by numerous individual letters
17 and communications sent by Plaintiffs and the Class before or within a reasonable
18 amount of time after Toyota issued the recall and the allegations of vehicle defects
19 became public.
20

21 2837. Plaintiffs and the Class have had sufficient direct dealings with either
22 the Defendants or their agents (dealerships) to establish privity of contract between
23 Plaintiffs and Toyota. Notwithstanding this, privity is not required in this case for
24 the Plaintiffs pursuant to W. VA. CODE § 46A-6-107. Moreover, privity is not
25 required as to any Plaintiff because Plaintiffs and the Class are intended third-party
26 beneficiaries of contracts between Toyota and its dealers; specifically, they are the
27 intended beneficiaries of Toyota’s implied warranties. The dealers were not
28

1 intended to be the ultimate consumers of the Defective Vehicles and have no rights
2 under the warranty agreements provided with the Defective Vehicles; the warranty
3 agreements were designed for and intended to benefit the ultimate users or owners
4 only. Finally, privity is also not required because Plaintiffs' and Class members'
5 Toyotas are dangerous instrumentalities due to the aforementioned defects and
6 nonconformities.
7

8 2838. As a direct and proximate result of Toyota's breach of the warranties of
9 merchantability, Plaintiffs and the Class have been damaged in an amount to be
10 proven at trial.
11

12 **COUNT IV**

13 **REVOCATION OF ACCEPTANCE/STATUTORY CLAIM** 14 **FOR DIMINISHED VALUE**

15 **(W. Va. Code § 46A-6A-1, *et seq.* and W. Va. Code § 46-2-608)**

16 2839. Plaintiffs reallege and incorporate by reference all paragraphs as though
17 fully set forth herein.

18 2840. Plaintiffs are "consumers," as defined by W.VA. CODE §§ 46A-1-
19 102(12), 46A-6-102(2) and 46A-6A-2 who purchased or leased one or more
20 Defective Vehicles.

21 2841. Toyota is and was at all relevant times a "manufacturer" of motor
22 vehicles under W. VA. CODE § 46A-6A-2.
23

24 2842. The warranties described in Count III, above, are "manufacturer's
25 express warrant[ies]" under W. VA. CODE § 46A-6A-2.

26 2843. The Defective Vehicles are "motor vehicles" under W. VA. CODE
27 § 46A-6A-2.
28

1 2844. As set forth above, the defective vehicles do not conform to all
2 applicable express warranties.

3 2845. Toyota was provided notice of these nonconformities by numerous
4 complaints filed against it, including the instant complaint, and by numerous
5 individual letters and communications sent by Plaintiffs and the Class before or
6 within a reasonable amount of time after Toyota issued the recall and the allegations
7 of vehicle defects became public.
8

9 2846. Toyota has been unable or unwilling to repair the Defective Vehicles so
10 as to conform to the Defective Vehicles to its warranties. Additionally, Toyota has
11 refused to replace the Defective Vehicles with new motor vehicles which are not
12 defective.
13

14 2847. The nonconformities set forth above, above, substantially impair the use
15 and market value of the Defective Vehicles, and Defective Vehicles equipped with
16 ETCS present a condition likely to death or serious bodily injury to Plaintiffs,
17 passengers, other motorists, pedestrians, and the public at large, because they are
18 susceptible to incidents of sudden unintended acceleration, if the vehicles are driven.
19

20 2848. As to the Defective Vehicles which were subject to one or both of the
21 “floor mat” or “sticky pedal” recalls, Toyota had at least one opportunity to conform
22 the Defective Vehicles to the express warranties, but failed to do so.

23 2849. Pursuant to W. VA. CODE § 46A-6A-4, Plaintiffs seek: (a) revocation of
24 acceptance and refund of the vehicle purchase price and all fees paid, (b) in the
25 alternative to revocation of acceptance, damages for diminished value of the
26 Defective Vehicles, (c) damages in the amount of the cost to repair the vehicle so
27
28

1 that it conforms to the warranties, (d) damages for loss of use and annoyance and
2 inconvenience, and (e) attorney fees.

3 2850. As of the time of the filing of this pleading, Toyota has been aware for
4 nearly a year of the breach of warranty claims under this statute alleged by West
5 Virginians who purchased or leased Defective vehicles. Indeed, Toyota has filed a
6 motion to dismiss the putative class action filed in the United States District Court
7 for the Southern District of West Virginia, which alleged such claims, among other
8 things. Nevertheless, Toyota has never insisted, or even mentioned, in writing any
9 “third party dispute resolution process” as contemplated by W. VA. CODE § 46A-6A-
10 8. As such, under W. VA. CODE § 46A-6A-8(b), even if any “qualified third party
11 dispute resolution process” exists (which Plaintiffs deny), the Plaintiffs have not
12 received, and could not now receive, timely notice in writing of such a procedure,
13 and they have no obligation to submit to such a procedure before bringing a claim
14 pursuant to W. VA. CODE § 46A-6A-4.
15
16

17 **COUNT V**

18 **UNJUST ENRICHMENT**

19 **(Based On West Virginia Law)**

20
21 2851. Plaintiffs reallege and incorporate by reference all paragraphs as though
22 fully set forth herein.

23 2852. As a result of their wrongful and fraudulent acts and omissions, as set
24 forth above, pertaining to the design defect of their vehicles and the concealment of
25 the defect, Defendants charged a higher price for their vehicles than the vehicles’
26 true value and Defendants obtained monies which rightfully belong to Plaintiffs.
27
28

2854. Plaintiffs, therefore, are entitled to restitution and seek and order establishing Toyota as constructive trustees of the profits unjustly obtained, plus interest.

COUNT VI

BREACH OF CONTRACT/COMMON LAW WARRANTY/BREACH OF DUTY OF GOOD FAITH AND FAIR DEALING

(Based On West Virginia Law)

2855. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

2856. To the extent Toyota's repair or adjust commitment is deemed not to be a warranty under West Virginia's Commercial Code, Plaintiffs plead in the alternative under common law warranty and contract law. Toyota limited the remedies available to Plaintiffs and the Class to just repairs and adjustments needed to correct defects in materials or workmanship of any part supplied by Toyota, and/or warranted the quality or nature of those services to Plaintiffs.

2857. Toyota breached this warranty or contract obligation by failing to repair the Defective Vehicles evidencing a sudden unintended acceleration problem, including those that were recalled, or to replace them.

2858. Moreover all contracts in West Virginia carry with them an implied duty of good faith and fair dealing. Toyota breached that duty by failing to repair the

1 Defective Vehicles evidencing a sudden unintended acceleration problem, including
2 those that were recalled, or the replace them, and in other ways.

3 2859. As a direct and proximate result of Defendants' breach of contract or
4 common law warranty, Plaintiffs and the Class have been damaged in an amount to
5 be proven at trial, which shall include, but is not limited to, all compensatory
6 damages, incidental and consequential damages, and other damages allowed by law.
7

8 **WISCONSIN**

9 **COUNT I**

10 **VIOLATIONS OF THE WISCONSIN**
11 **DECEPTIVE TRADE PRACTICES ACT**

12 **(Wisc. Stat. § 110.18)**

13 2860. Plaintiffs reallege and incorporate by reference all paragraphs as though
14 fully set forth herein.

15 2861. Defendants' above-described acts and omissions constitute false,
16 misleading or deceptive acts or practices under the Wisconsin Deceptive Trade
17 Practices Act § 110.18 ("Wisconsin DTPA").
18

19 2862. By failing to disclose and misrepresenting the risk of throttle control
20 failure and adequacy of fail-safe mechanisms in Defective Vehicles equipped with
21 ETCS, Defendants engaged in deceptive business practices prohibited by the
22 Wisconsin DTPA, including (1) representing that Defective Vehicles have
23 characteristics, uses, benefits, and qualities which they do not have, (2) representing
24 that Defective Vehicles are of a particular standard, quality, and grade when they are
25 not, (3) advertising Defective Vehicles with the intent not to sell them as advertised,
26 (4) representing that a transaction involving Defective Vehicles confers or involves
27
28

1 rights, remedies, and obligations which it does not, and (5) representing that the
2 subject of a transaction involving Defective Vehicles has been supplied in
3 accordance with a previous representation when it has not.

4 2863. As alleged above, Defendants made numerous material statements about
5 the safety and reliability of Defective Vehicles that were either false or misleading.
6 Each of these statements contributed to the deceptive context of TMC's and TMS's
7 unlawful advertising and representations as a whole.

8 2864. TMC's and TMS's unfair or deceptive acts or practices were likely to
9 and did in fact deceive reasonable consumers, including Plaintiffs, about the true
10 safety and reliability of Defective Vehicles.

11 2865. In purchasing or leasing their vehicles, the Plaintiffs relied on the
12 misrepresentations and/or omissions of Toyota with respect of the safety and
13 reliability of the vehicles. Toyota's representations turned out not to be true because
14 the vehicles can unexpectedly and dangerously accelerate out of the drivers' control.
15 Had the Plaintiffs known this they would not have purchased or leased their
16 Defective Vehicles and/or paid as much for them.

17 2866. Plaintiffs and the Class sustained damages as a result of the Defendants
18 unlawful acts and are, therefore, entitled to damages and other relief provided for
19 under § 110.18(11)(b)(2) of the Wisconsin DTPA. Because Defendants' conduct
20 was committed knowingly and/or intentionally, the Plaintiffs and the Class are
21 entitled to treble damages.

22 2867. Plaintiffs and the Class also seek court costs and attorneys' fees under
23 § 110.18(11)(b)(2) of the Wisconsin DTPA.
24
25
26
27
28

COUNT II_

BREACH OF EXPRESS WARRANTY

(Wisc. Stat. § 402.313)

2868. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

2869. Toyota is and was at all relevant times a merchant with respect to motor vehicles under WISC. STAT. § 402.104.

2870. In the course of selling its vehicles, Toyota expressly warranted in writing that the Vehicles were covered by a Basic Warranty.

2871. Toyota breached the express warranty to repair and adjust to correct defects in materials and workmanship of any part supplied by Toyota. Toyota has not repaired or adjusted, and has been unable to repair or adjust, the Vehicles' materials and workmanship defects.

2872. In addition to this Basic Warranty, Toyota expressly warranted several attributes, characteristics and qualities, as set forth above.

2873. These warranties are only a sampling of the numerous warranties that Toyota made relating to safety, reliability and operation, which are more fully outlined in Section IV.A., *supra*. Generally these express warranties promise heightened, superior, and state-of-the-art safety, reliability, performance standards, and promote the benefits of ETCS. These warranties were made, *inter alia*, in advertisements, in Toyota's "e-brochures," and in uniform statements provided by Toyota to be made by salespeople. These affirmations and promises were part of the basis of the bargain between the parties.

1 2874. These additional warranties were also breached because the Defective
2 Vehicles were not fully operational, safe, or reliable (and remained so even after the
3 problems were acknowledged and a recall “fix” was announced), nor did they
4 comply with the warranties expressly made to purchasers or lessees. Toyota did not
5 provide at the time of sale, and has not provided since then, vehicles conforming to
6 these express warranties.
7

8 2875. Furthermore, the limited warranty of repair and/or adjustments to
9 defective parts, fails in its essential purpose because the contractual remedy is
10 insufficient to make the Plaintiffs and the Class whole and because the Defendants
11 have failed and/or have refused to adequately provide the promised remedies within
12 a reasonable time.
13

14 2876. Accordingly, recovery by the Plaintiffs is not limited to the limited
15 warranty of repair or adjustments to parts defective in materials or workmanship, and
16 Plaintiffs seek all remedies as allowed by law.
17

18 2877. Also, as alleged in more detail herein, at the time that Defendants
19 warranted and sold the vehicles they knew that the vehicles did not conform to the
20 warranties and were inherently defective, and Defendants wrongfully and
21 fraudulently misrepresented and/or concealed material facts regarding their vehicles.
22 Plaintiffs and the Class were therefore induced to purchase the vehicles under false
23 and/or fraudulent pretenses. The enforcement under these circumstances of any
24 limitations whatsoever precluding the recovery of incidental and/or consequential
25 damages is unenforceable.
26

27 2878. Moreover, many of the damages flowing from the Defective Vehicles
28 cannot be resolved through the limited remedy of “replacement or adjustments,” as

1 those incidental and consequential damages have already been suffered due to
2 Defendants' fraudulent conduct as alleged herein, and due to their failure and/or
3 continued failure to provide such limited remedy within a reasonable time, and any
4 limitation on Plaintiffs' and the Class' remedies would be insufficient to make
5 Plaintiffs and the Class whole.
6

7 2879. Plaintiffs and the Class had sufficient direct dealings with the
8 Defendants to establish privity of contract between Plaintiffs and the Class.
9 Notwithstanding this, privity is not required in this case because Plaintiffs and Class
10 are intended third-party beneficiaries of contracts between Toyota and its dealers;
11 specifically, they are the intended beneficiaries of Toyota's warranties. The dealers
12 were not intended to be the ultimate consumers of the Defective Vehicles and have
13 no rights under the warranty agreements provided with the Defective Vehicles; the
14 warranty agreements were designed for and intended to benefit the ultimate
15 consumers only.
16

17 2880. Finally, due to the Defendants' breach of warranties as set forth herein,
18 Plaintiffs and the Class assert as an additional and/or alternative remedy, as set forth
19 in WISC. STAT. § 402.608, for a revocation of acceptance of the goods, and for a
20 return to Plaintiffs and to the Class of the purchase price of all vehicles currently
21 owned and for such other incidental and consequential damages as allowed under
22 Wisc. Stat. §§ 402.711 and 402.608.
23

24 2881. Toyota was provided notice of these issues by numerous complaints
25 filed against it, including the instant complaint, and by numerous individual letters
26 and communications sent by Plaintiffs and the Class before or within a reasonable
27
28

1 amount of time after Toyota issued the recall and the allegations of vehicle defects
2 became public.

3 2882. As a direct and proximate result of Toyota's breach of express
4 warranties, Plaintiffs and the Class have been damaged in an amount to be
5 determined at trial.
6

7 **COUNT III**
8 **REVOCATION OF ACCEPTANCE**
9 **(Wisc. Stat § 402.608)**

10 2883. Plaintiffs reallege and incorporate by reference all paragraphs as though
11 fully set forth herein.
12

13 2884. Plaintiffs identified above demanded revocation and their demands were
14 refused.

15 2885. Plaintiffs and the Class had no knowledge of such defects and
16 nonconformities, were unaware of these defects, and reasonably could not have
17 discovered them when they purchased or leased their automobiles from Toyota. On
18 the other hand, Toyota was aware of the defects and nonconformities at the time of
19 sale and thereafter.
20

21 2886. Acceptance was reasonably induced by the difficulty of discovery of the
22 defects and nonconformities before acceptance.

23 2887. There has been no change in the condition of Plaintiffs' vehicles not
24 caused by the defects and nonconformities.

25 2888. When Plaintiffs sought to revoke acceptance, Toyota refused to accept
26 return of the Defective Vehicles and to refund Plaintiffs' purchase price and monies
27 paid.
28

1 2889. Plaintiffs and the Class would suffer economic hardship if they returned
2 their vehicles but did not receive the return of all payments made by them. Because
3 Toyota is refusing to acknowledge any revocation of acceptance and return
4 immediately any payments made, Plaintiffs and the Class have not re-accepted their
5 Defective Vehicles by retaining them.
6

7 2890. These defects and nonconformities substantially impaired the value of
8 the Defective Vehicles to Plaintiffs and the Class. This impairment stems from two
9 basic sources. First, the Defective Vehicles fail in their essential purpose because
10 they present an unreasonably high risk of sudden unintended acceleration (a risk
11 acknowledged by Toyota's recall), rendering them unsafe in a very material way.
12 Second, the repair and adjust warranty has failed of its essential purpose because
13 Toyota cannot repair or adjust the Defective Vehicles.
14

15 2891. Plaintiffs and the Class provided notice of their intent to seek revocation
16 of acceptance by a class-action lawsuit seeking such relief. In addition, Plaintiffs
17 (and many Class members) have requested that Toyota accept return of their vehicles
18 and return all payments made. Plaintiffs on behalf of themselves and the Class
19 hereby demand revocation and tender their Defective Vehicles.
20

21 2892. Plaintiffs and the Class would suffer economic hardship if they returned
22 their vehicles but did not receive the return of all payments made by them. Because
23 Toyota is refusing to acknowledge any revocation of acceptance and return
24 immediately any payments made, Plaintiffs and the Class have not re-accepted their
25 Defective Vehicles by retaining them, as they must continue using them due to the
26 financial burden of securing alternative means of transport for an uncertain and
27 substantial period of time.
28

1 2893. Finally, due to the Defendants' breach of warranties as set forth herein,
2 Plaintiffs and the Class assert as an additional and/or alternative remedy, as set forth
3 in WISC. STAT. § 402.711, for a revocation of acceptance of the goods, and for a
4 return to Plaintiffs and to the Class of the purchase price of all vehicles currently
5 owned and for such other incidental and consequential damages as allowed under
6 WISC. STAT. § 402.711.
7

8 2894. Consequently, Plaintiffs and the Class are entitled to revoke their
9 acceptances, receive all payments made to Toyota, and to all incidental and
10 consequential damages, including the costs associated with purchasing safer
11 vehicles, and all other damages allowable under law, all in amounts to be proven at
12 trial.
13

14 **COUNT IV**

15 **BREACH OF CONTRACT/COMMON LAW WARRANTY**

16 **(Based On Wisconsin Law)**

17 2895. Plaintiffs incorporate by reference and reallege all paragraphs alleged
18 herein.
19

20 2896. To the extent Toyota's repair or adjust commitment is deemed not to be
21 a warranty under the Uniform Commercial Code as adopted in Wisconsin, Plaintiffs
22 plead in the alternative under common law warranty and contract law. Toyota
23 limited the remedies available to Plaintiffs and the Class to just repairs and
24 adjustments needed to correct defects in materials or workmanship of any part
25 supplied by Toyota, and/or warranted the quality or nature of those services to
26 Plaintiffs.
27
28

2898. As a direct and proximate result of Defendants' breach of contract or common law warranty, Plaintiffs and the Class have been damaged in an amount to be proven at trial, which shall include, but is not limited to, all compensatory damages, incidental and consequential damages, and other damages allowed by law.

2899. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

2901. Defendants had a duty to disclose these safety issues because they consistently marketed their vehicles as safe and proclaimed that safety is one of Toyota's highest corporate priorities. Once Defendants made representations to the public about safety, Defendants were under a duty to disclose these omitted facts, because where one does speak one must speak the whole truth and not conceal any facts which materially qualify those facts stated. One who volunteers information must be truthful, and the telling of a half-truth calculated to deceive is fraud.

1 known to or reasonably discoverable by Plaintiffs and the Class. These omitted facts
2 were material because they directly impact the safety of the Defective Vehicles.
3 Whether or not a vehicle accelerates only at the driver's command, and whether a
4 vehicle will stop or not upon application of the brake by the driver, are material
5 safety concerns. Defendants possessed exclusive knowledge of the defects rendering
6 Defective Vehicles inherently more dangerous and unreliable than similar vehicles.
7

8 2903. Defendants actively concealed and/or suppressed these material facts, in
9 whole or in part, with the intent to induce Plaintiffs and the Class to purchase
10 Defective Vehicles at a higher price for the vehicles, which did not match the
11 vehicles' true value.
12

13 2904. Defendants still have not made full and adequate disclosure and
14 continue to defraud Plaintiffs and the Class.

15 2905. Plaintiffs and the Class were unaware of these omitted material facts
16 and would not have acted as they did if they had known of the concealed and/or
17 suppressed facts. Plaintiffs' and the Class' actions were justified. Defendants were
18 in exclusive control of the material facts and such facts were not known to the public
19 or the Class.
20

21 2906. As a result of the concealment and/or suppression of the facts, Plaintiffs
22 and the Class sustained damage.

23 2907. Defendants' acts were done maliciously, oppressively, deliberately, with
24 intent to defraud, and in reckless disregard of Plaintiffs' and the Class' rights and
25 well-being to enrich Defendants. Defendants' conduct warrants an assessment of
26 punitive damages in an amount sufficient to deter such conduct in the future, which
27 amount is to be determined according to proof.
28

COUNT VI

UNJUST ENRICHMENT

(Based On Wisconsin Law)

2908. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

2909. As a result of their wrongful and fraudulent acts and omissions, as set forth above, pertaining to the design defect of their vehicles and the concealment of the defect, Defendants charged a higher price for their vehicles than the vehicles' true value and Defendants obtained monies which rightfully belong to Plaintiffs.

2910. Defendants enjoyed the benefit of increased financial gains, to the detriment of Plaintiffs and the Class, who paid a higher price for vehicles which actually had lower values. It would be inequitable and unjust for Defendants to retain these wrongfully obtained profits.

2911. Plaintiffs, therefore, seek an order establishing Defendants as constructive trustees of the profits unjustly obtained, plus interest.

WYOMING

COUNT I

VIOLATION OF THE WYOMING CONSUMER PROTECTION ACT

(Wyo. Stat. §§ 45-12-105 *et seq.*)

2912. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

2913. The Wyoming Consumer Protection Act describes that a person engages in a deceptive trade practice under this act when, in the course of his business and in connection with a consumer transaction he knowingly does one or more of the

1 following, including: “(iii) Represents that merchandise is of a particular standard,
2 grade, style or model, if it is not”; “(v) Represents that merchandise has been
3 supplied in accordance with a previous representation, if it has not...”;
4 “(viii) Represents that a consumer transaction involves a warranty, a disclaimer of
5 warranties, particular warranty terms, or other rights, remedies or obligations if the
6 representation is false”; “(x) Advertises merchandise with intent not to sell it as
7 advertised”; and “(xv) Engages in unfair or deceptive acts or practices.” WYO. STAT.
8 § 45-12-105.
9

10 2914. In the course of Toyota’s business, it willfully failed to disclose and
11 actively concealed the dangerous risk of throttle control failure and the lack of
12 adequate fail-safe mechanisms in Defective Vehicles equipped with ETCS as
13 described above. Accordingly, Toyota engaged in deceptive trade practices,
14 including representing that Defective Vehicles are of a particular standard and grade,
15 which they are not; representing that Defective Vehicles have been supplied with a
16 previous representation when they are not; advertising Defective Vehicles with the
17 intent not to sell them as advertised; representing that its transaction involves a
18 warranty, rights, remedies, or obligations that are false; and overall engaging in
19 unfair and deceptive acts or practices.
20
21

22 2915. Toyota knowingly made false representations to consumers with the
23 intent to induce consumers into purchasing Toyota vehicles. Plaintiffs reasonably
24 relied on false representations by Toyota and were induced to each purchase a
25 Toyota vehicle, to his/her detriment. As a result of these unlawful trade practices,
26 Plaintiffs have suffered ascertainable loss.
27
28

1 2916. Plaintiffs and the Class suffered ascertainable loss caused by Toyota's
2 false representations and failure to disclose material information. Plaintiffs and the
3 Class overpaid for their vehicles and did not receive the benefit of their bargain. The
4 value of their Toyota's has diminished now that the safety issues have come to light,
5 and Plaintiffs and the Class own vehicles that are not safe.
6

7 2917. Toyota is a "person" as required under the statute.

8 2918. Toyota's actions as set forth above occurred in the course of business
9 and in connection with a consumer transaction.

10 2919. As required under the Wyoming Consumer Protection Act, a notice
11 letter was sent on behalf of the class in connection with the case: *Gureski v. Toyota*
12 *Motor North America, Inc., et al.*; Case No. 10-cv-00031.
13

14 COUNT II

15 BREACH OF EXPRESS WARRANTY

16 (Wyo. Stat. § 34.1-2-313)

17 2920. Plaintiffs reallege and incorporate by reference all paragraphs as though
18 fully set forth herein.
19

20 2921. Toyota is and was at all relevant times a merchant with respect to motor
21 vehicles under the Uniform Commercial Code.

22 2922. In the course of selling its vehicles, Toyota expressly warranted in
23 writing that the Vehicles were covered by a Basic Warranty.

24 2923. Toyota breached the express warranty to repair and adjust to correct
25 defects in materials and workmanship of any part supplied by Toyota. Toyota has
26 not repaired or adjusted, and has been unable to repair or adjust, the Vehicles'
27 materials and workmanship defects.
28

1 2924. In addition to this Basic Warranty, Toyota expressly warranted several
2 attributes, characteristics and qualities, as set forth above.

3 2925. These warranties are only a sampling of the numerous warranties that
4 Toyota made relating to safety, reliability and operation, which are more fully
5 outlined in Section IV.A., *supra*. Generally these express warranties promise
6 heightened, superior, and state-of-the-art safety, reliability, performance standards,
7 and promote the benefits of ETCS. These warranties were made, *inter alia*, in
8 advertisements, in Toyota's "e brochures," and in uniform statements provided by
9 Toyota to be made by salespeople. These affirmations and promises were part of the
10 basis of the bargain between the parties.
11

12 2926. These additional warranties were also breached because the Defective
13 Vehicles were not fully operational, safe, or reliable (and remained so even after the
14 problems were acknowledged and a recall "fix" was announced), nor did they
15 comply with the warranties expressly made to purchasers or lessees. Toyota did not
16 provide at the time of sale, and has not provided since then, vehicles conforming to
17 these express warranties.
18

19 2927. Furthermore, the limited warranty of repair and/or adjustments to
20 defective parts, fails in its essential purpose because the contractual remedy is
21 insufficient to make the Plaintiffs and the Class whole and because the Defendants
22 have failed and/or have refused to adequately provide the promised remedies within
23 a reasonable time.
24

25 2928. Accordingly, recovery by the Plaintiffs is not limited to the limited
26 warranty of repair or adjustments to parts defective in materials or workmanship, and
27 Plaintiffs seek all remedies as allowed by law.
28

1 2929. Also, as alleged in more detail herein, at the time that Defendants
2 warranted and sold the vehicles they knew that the vehicles did not conform to the
3 warranties and were inherently defective, and Defendants wrongfully and
4 fraudulently misrepresented and/or concealed material facts regarding their vehicles.
5 Plaintiffs and the Class were therefore induced to purchase the vehicles under false
6 and/or fraudulent pretenses. The enforcement under these circumstances of any
7 limitations whatsoever precluding the recovery of incidental and/or consequential
8 damages is unenforceable.
9

10 2930. Moreover, many of the damages flowing from the Defective Vehicles
11 cannot be resolved through the limited remedy of “replacement or adjustments,” as
12 those incidental and consequential damages have already been suffered due to
13 Defendants’ fraudulent conduct as alleged herein, and due to their failure and/or
14 continued failure to provide such limited remedy within a reasonable time, and any
15 limitation on Plaintiffs’ and the Class’ remedies would be insufficient to make
16 Plaintiffs and the Class whole.
17

18 2931. Toyota was provided notice of these issues by numerous complaints
19 filed against it, including the instant complaint, and by numerous individual letters
20 and communications sent by Plaintiffs and the Class before or within a reasonable
21 amount of time after Toyota issued the recall and the allegations of vehicle defects
22 became public.
23

24 2932. As a direct and proximate result of Toyota’s breach of express
25 warranties, Plaintiffs and the Class have been damaged in an amount to be
26 determined at trial.
27
28

COUNT III

BREACH OF THE IMPLIED WARRANTY OF MERCHANTABILITY

(Wyo. Stat. §§ 34.1-2-314)

2933. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

2934. Toyota is and was at all relevant times a merchant with respect to motor vehicles under the Uniform Commercial Code.

2935. A warranty that the Defective Vehicles were in merchantable condition was implied by law in the instant transaction, pursuant to the Uniform Commercial Code.

2936. These vehicles, when sold and at all times thereafter, were not in merchantable condition and are not fit for the ordinary purpose for which cars are used. Specifically, the Defective Vehicles are inherently defective in that there are defects in the vehicle control systems that permit sudden unintended acceleration to occur; the Defective Vehicles do not have an adequate fail-safe to protect against such SUA events, nor do they have a brake-override; and the ETCS system was not adequately tested.

2937. Toyota was provided notice of these issues by numerous complaints filed against it, including the instant complaint, and by numerous individual letters and communications sent by Plaintiffs and the Class before or within a reasonable amount of time after Toyota issued the recall and the allegations of vehicle defects became public.

1 Toyota is refusing to acknowledge any revocation of acceptance and return
2 immediately any payments made, Plaintiffs and the Class have not re-accepted their
3 Defective Vehicles by retaining them.

4 2946. These defects and nonconformities substantially impaired the value of
5 the Defective Vehicles to Plaintiffs and the Class. This impairment stems from two
6 basic sources. First, the Defective Vehicles fail in their essential purpose because
7 they present an unreasonably high risk of sudden unintended acceleration (a risk
8 acknowledged by Toyota's recall), rendering them unsafe in a very material way.
9 Second, the repair and adjust warranty has failed of its essential purpose because
10 Toyota cannot repair or adjust the Defective Vehicles.

11 2947. Plaintiffs and the Class provided, within a reasonable amount of time,
12 notice of their intent to seek revocation of acceptance by a class-action lawsuit
13 seeking such relief. In addition, Plaintiffs (and many Class members) have requested
14 that Toyota accept return of their vehicles and return all payments made. Plaintiffs
15 on behalf of themselves and the Class hereby demand revocation and tender their
16 Defective Vehicles.

17 2948. Plaintiffs and the Class would suffer economic hardship if they returned
18 their vehicles but did not receive the return of all payments made by them. Because
19 Toyota is refusing to acknowledge any revocation of acceptance and return
20 immediately any payments made, Plaintiffs and the Class have not re-accepted their
21 Defective Vehicles by retaining them, as they must continue using them due to the
22 financial burden of securing alternative means of transport for an uncertain and
23 substantial period of time.

COUNT V

(Based On Wyoming Law)

2951. To the extent Toyota's repair or adjust commitment is deemed not to be a warranty under Wyoming's Commercial Code, Plaintiffs plead in the alternative under common law warranty and contract law. Toyota limited the remedies available to Plaintiffs and the Class to just repairs and adjustments needed to correct defects in materials or workmanship of any part supplied by Toyota, and/or warranted the quality or nature of those services to Plaintiffs.

2953. As a direct and proximate result of Defendants' breach of contract or common law warranty, Plaintiffs and the Class have been damaged in an amount to be proven at trial, which shall include, but is not limited to, all compensatory damages, incidental and consequential damages, and other damages allowed by law.

COUNT VI

**BREACH OF IMPLIED COVENANT OF GOOD FAITH
AND FAIR DEALING**

(Based On Wyoming Law)

2954. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

2955. As set forth above, Plaintiffs and the Class have entered into individual sales transactions and agreements with Toyota for the purchase Toyota vehicles.

2956. Plaintiffs and the Class have fully performed their obligations with Toyota under such transactions and agreements.

2957. At all times, Toyota owed Plaintiffs and the Class a duty to exercise and act in good faith and deal fairly with them in the performance of repairs of Defective Vehicles.

2958. Toyota has breached these duties and obligations in the manner and particulars set forth above, including, but not limited to, failing to repair the Defective Vehicles evidencing a sudden unintended acceleration problem, including those that were recalled, or to replace them.

2959. As a direct and proximate result of Defendants' failure to abide and comply with their obligations and duties, Plaintiffs and the Class have suffered pecuniary damages in an amount that has not yet been determined.

COUNT VII
FRAUD BY CONCEALMENT
(Based On Wyoming Law)

2960. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

2961. As set forth above, Defendants concealed and/or suppressed material facts concerning the safety of their vehicles.

2962. Defendants had a duty to disclose these safety issues because they consistently marketed their vehicles as safe and proclaimed that safety is one of Toyota's highest corporate priorities. Once Defendants made representations to the public about safety, Defendants were under a duty to disclose these omitted facts, because where one does speak one must speak the whole truth and not conceal any facts which materially qualify those facts stated. One who volunteers information must be truthful, and the telling of a half-truth calculated to deceive is fraud.

2963. In addition, Defendants had a duty to disclose these omitted material facts because they were known and/or accessible only to Defendants who have superior knowledge and access to the facts, and Defendants knew they were not known to or reasonably discoverable by Plaintiffs and the Class. These omitted facts were material because they directly impact the safety of the Defective Vehicles. Whether or not a vehicle accelerates only at the driver's command, and whether a vehicle will stop or not upon application of the brake by the driver, are material safety concerns. Defendants possessed exclusive knowledge of the defects rendering Defective Vehicles inherently more dangerous and unreliable than similar vehicles.

2965. Defendants still have not made full and adequate disclosure and continue to defraud Plaintiffs and the Class.

2967. As a result of the concealment and/or suppression of the facts, Plaintiffs and the Class sustained damage.

COUNT VIII

2969. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1 2970. As a result of their wrongful and fraudulent acts and omissions, as set
2 forth above, pertaining to the design defect of their vehicles and the concealment of
3 the defect, Defendants charged a higher price for their vehicles than the vehicles'
4 true value and Defendants obtained monies which rightfully belong to Plaintiffs.
5

6 2971. Defendants enjoyed the benefit of increased financial gains, to the
7 detriment of Plaintiffs and the Class, who paid a higher price for vehicles which
8 actually had lower values. Plaintiffs and other class members expected to be paid
9 back for the difference between the actual vehicle value and the amount which
10 Plaintiffs and the Class paid due to wrongful and fraudulent acts and omissions. It
11 would be inequitable and unjust for Defendants to retain these wrongfully obtained
12 profits.
13

14 2972. Plaintiffs, therefore, seek an order establishing Defendants as
15 constructive trustees of the profits unjustly obtained, plus interest.
16

17 **PRAYER FOR RELIEF**

18 (a) Injunctive relief, restitution, statutory, and punitive damages under the
19 CLRA;

20 (b) Restitution or restitutionary disgorgement as provided in CAL. BUS. &
21 PROF. CODE § 17203 and CAL. CIV. CODE § 3343;

22 (c) Injunctive relief, restitution and appropriate relief under CAL. BUS. &
23 PROF. CODE § 17500;

24 (d) For appropriate damages for breach of express and implied warranties;

25 (e) For revocation of acceptance;

26 (f) For damages under the Magnuson-Moss Warranty Act;

27 (g) Punitive damages;
28

1 (h) For damages as allowed by the laws of the states as alleged in the
2 alternate counts;

3 (i) Attorneys' fees; and

4 (j) An injunction ordering Toyota to implement an effective fail-safe
5 mechanism on all vehicles with ETCS.
6

7 DATED: October 27, 2010.
8

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26 *Plaintiffs Lead Counsel Committee for Economic*
27 *Loss Cases*

28 **DEMAND FOR JURY TRIAL**

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiffs demand a trial by jury on all issues so triable.

1 DATED: October 27, 2010.

2
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PROOF OF SERVICE

I hereby certify that a true copy of the above document was served upon the attorney of record for each other party through the Court's electronic filing service on October 27, 2010.

/s/ Steve W. Berman

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